

Durham Research Online

Deposited in DRO:

12 May 2006

Version of attached file:

Published Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Hoebink, M. (Ed.) (1999) 'Constitutional perspectives on Sudan : (proceedings of the IDF seminar).', Working Paper. University of Durham, Centre for Middle Eastern and Islamic Studies, Durham.

Further information on publisher's website:

<http://www.dur.ac.uk/sgia/>

Publisher's copyright statement:

Additional information:

Proceedings of the International Dialogues Foundation (IDF) seminar held at University of Durham, 23 and 24 September 1999. This was a preparatory meeting for the Conference on Constitutional Perspectives on Sudan held in The Hague, 2000.

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

University of Durham
Centre for Middle Eastern and Islamic Studies
and
International Dialogues Foundation
The Hague

CONSTITUTIONAL PERSPECTIVES ON SUDAN
(PROCEEDINGS OF THE IDF SEMINAR)

Edited by

Michel Hoebink

*Durham Middle East Paper No. 62
December 1999*

24 JAN 2001



Pam
PK1653
CON

Durham Middle East Papers

ISSN 1357-7522

No. 62

The Durham Middle East Papers series covers all aspects of the economy, politics, social science, history, literature and languages of the Middle East. Authors are invited to submit papers to the Editorial Board for consideration for publication.

Series editor: Dr Neil Quilliam

Editorial board: Dr Ali Ansari
Dr Anoush Ehteshami
Dr Fadia Faqir
Dr Tom Najem
Dr Paul Starkey

51-1086

Published by: Centre for Middle Eastern and Islamic Studies
University of Durham
South End House
South Road
Durham DH1 3TG
United Kingdom
Tel: +44 (0) 191 374 2822
Fax: +44 (0) 191 374 2830

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise (other than short extracts for the purposes of review), without the prior written permission of the Centre for Middle Eastern and Islamic Studies, University of Durham.

© 1999 International Dialogues Foundation (IDF) and the University of Durham

CONTENTS

Abbreviations

Preface, *Peter Idenburg*

Introduction, *Michel Hoebink* 1

Proceedings of the Seminar 10

Objectives of the Durham Seminar 10

First Session: Evaluation of Sudanese Peace Efforts 12

Second Session: Creating a Consensus 35

Third Session: Themes for the Conference on Constitutional Perspectives on Sudan 54

Appendix I: *Programme of the Durham Seminar* *Constitutional Perspectives on Sudan* 96

Appendix II: *Profile of Participants* 98

Appendix III: *Outline of the IDF Project 'Constitutional Perspectives on Sudan'* 103

Appendix IV: *Women in Search of a Just Peace for Sudan* 109

ABBREVIATIONS

DOP	Declaration of Principles
DUP	Democratic Unionist Party
IGADD	Intergovernmental Authority on Drought and Development
IDF	International Dialogues Foundation
KPA	Khartoum Peace Agreement
NCPI	National Conference on Peace Issues
NDA	National Democratic Alliance
NIF	National Islamic Front
NSR	National Salvation Revolution
OLS	Operation Lifeline Sudan
SSIM/A	South Sudan Independence Movement/Army
SPLA/M	Sudan People's Liberation Army/Movement

PREFACE

On 23 and 24 September 1999, International Dialogues Foundation (IDF) held a seminar with a small group of Sudanese intellectuals and politicians at the University of Durham (UK) on constitutional perspectives on Sudan. This paper contains the proceedings of the Durham seminar.

The objective of this seminar was to have an informal preparatory meeting to determine what should be discussed in the Conference on Constitutional Perspectives on Sudan to be held next year in The Hague (see Appendix III).

IDF, established in 1998, is an international organisation based in the Netherlands, which aims at promoting dialogue between conflicting parties in different parts of the world. There are two subjects that draw special interest and commitment of IDF. One is the situation of people whose identity is denied, with the Palestinians and Kurds as two exemplary cases. The other is the dialogue between the West and Islam. It is not surprising that these two preoccupations led us to the case of Sudan.

The activities of IDF are based on a firm belief in the importance of the establishment of informal personal networks, which transcend the borders of partisanship, as the basis for an open-minded exchange of ideas. First of all the exchange of ideas should clarify the issues and positions that are taken by the different parties.

It is up to the reader to judge how far this open-mindedness was present in the Durham seminar. For the organisers, these discussions provided sufficient ground for the conviction that this dialogue should be continued.

We would like to thank our sponsors - the Catholic Aid Organisation Bilance, the Dutch Inter Church Aid, the Dutch Ministry of Foreign Affairs, and the Dutch Embassy in Khartoum - for the trust they have placed in this project.

Peter Idenburg, IDF

INTRODUCTION

Sudan is a large nation with a population that is composed of a great variety of ethnic, cultural, religious and political identities. Since their independence in 1956, the Sudanese people have been struggling towards finding a constitutional formula that would convince all the different groups in the country of the representation of their interests and aspirations.

Since independence, the predominantly Muslim North of the country has witnessed a struggle between a minority of 'modern forces' and two large traditional parties, the Umma Party and the Democratic Unionist Party (DUP), which have dominated Northern Sudanese politics through their large religious following. A third group, the Sudanese Muslim Brothers - later known as the National Islamic Front (NIF) - advocated the establishment of an Islamic state through an Islamic constitution based on *shari'a* law. In this, they were opposed by the secular modern forces. Each of the two parties involved in this controversy has tried to win over the less outspoken traditional parties to its side.

Southern Sudan, meanwhile, has suffered civil war for most of Sudan's history since independence. Southern groups that took to arms generally oppose what they view as Northern Arab-Muslim domination of the mainly non-Arab non-Muslim South. In 1972, peace was achieved with the Addis Ababa Agreement, which granted regional autonomy to the South. Since 1983, however, a new rebel movement, Sudan People's Liberation Army/Movement (SPLA/M), has carried arms against the central government in Khartoum. Unlike earlier Southern rebel movements that argued for separation, the SPLA/M has been committed to a unitary Sudan with a decentralised structure and a secular constitution. It claimed to represent not only Southern Sudan, but also other Sudanese peoples that had been marginalised by the hegemony of the North-Central Sudanese.

The present National Salvation government that came to power in 1989 is strongly influenced by the NIF, and is committed to the creation of an Islamic state. The application of Islamic law, it is argued, is the will of the Muslim majority in the country, and as such constitutes a good basis of nation-building

while this law is just as protective of the rights of non-Muslim citizens as the secular legislation imported from the west. A federal structure, which exempted non-Muslim regions from certain aspects of *shari'a*, was established.

In Northern Sudan, the present government has been opposed by the two traditional parties, the modern secular forces, and a number of regional groups who felt marginalised by Arab-Muslim hegemony. This opposition organised itself in 1989 in the National Democratic Alliance (NDA), which was soon joined by the SPLA/M. Particularly, since 1997, the NDA has launched military campaigns, from Eritrea, against the government army. In its vision of a future constitutional set-up for Sudan, the NDA largely agreed with the SPLA/M on the issues of power- and wealth-sharing and decentralisation. The powerful Umma Party, however, found it difficult to accept an outright call for a secular state. Instead, a discourse was adopted that spoke of a 'civil state' and 'citizenship as the basis for rights and duties'.

Since its coming to power, the government of Sudan has been engaged in several rounds of peace negotiations with different Southern groups. In 1994, a process of negotiations was started in Nairobi under the supervision of the Intergovernmental Authority on Drought and Development (IGADD), which is a regional grouping of states comprising Djibouti, Eritrea, Ethiopia, Kenya, Uganda and Sudan. The IGADD talks have been bilateral negotiations between the SPLA/M and the government in which Northern opposition has not participated.

Under the IGADD process, the principle of self-determination has taken centre-stage in the peace negotiations. Breakaway factions from the SPLA/M led by Riak Machar and Lam Akol have already argued for separation since 1989, and also the SPLA/M itself has increasingly embraced the idea that in case unity in equality proves impossible, the South should be given the right to self-determination. In 1994, the mediators in the IGADD process drafted a Declaration of Principles (DOP), which affirmed the right to self-determination for the people of Southern Sudan through a referendum. It also stated that maintaining the unity of Sudan must be given priority on the basis of a number of principles, such as the establishment of a secular democratic state, extensive decentralisation, and sharing of wealth and power. The DOP was accepted by the SPLA/M, but refused by the government.

In 1995, the essence of the DOP was adopted by the Northern opposition groups in the NDA Asmara Declaration. The Declaration stated that the South

as well as the people of the Nuba Mountains and Southern Blue Nile would exercise self-determination through a referendum before the end of a four-year interim period. During the interim period, political parties based on religion would be forbidden and Sudan would be ruled on the basis of decentralisation. The prospect of a possible independent Southern Sudan, however, was hard to accept for many members of the Northern opposition and some continued to speak of the right to self-determination as a way to achieve unity.

The government on its part decided not to lag behind in joining the emerging consensus on the right to self-determination. In 1997, it concluded peace agreements with the breakaway rebel factions of Riak Machar and Lam Akol. The Khartoum Peace Agreement (KPA) gave the people of Southern Sudan the right to choose between unity and secession in a referendum before the end of an interim period, which was expected to last for four years. Further, the KPA contained provisions on wealth-sharing, participation of Southern citizens in the federal administration and rights and duties on the basis of citizenship. Now that it had accepted the principle of self-determination in its agreement with the breakaway rebel factions, the government agreed in 1997 to resume the IGADD talks with the SPLA/M on the basis of the DOP. Both sides, however, had reservations on the DOP: the government could not accept separation of state and religion, and the SPLA/M insisted that right to self-determination should also be given to the regions of the Nuba Mountains and Southern Blue Nile. Until 1999, no agreement has been reached on these issues.

The present peace process is influenced by a number of recent developments. Firstly, the government has started, this year, to produce large quantities of oil in the government-controlled areas of Southern Sudan. As many Southerners feel that the oil revenues will be used in fuelling the war, they are trying to bring this issue on the IGADD agenda. Secondly, a growing discontent has developed among the Southern parties to the KPA, who feel that the government does not honour the agreement. Thirdly, the IGADD process is now being challenged by a Libyan peace initiative supported by Egypt. The Libyans proposed that the parties to the conflict come to a cease-fire in order to reach an agreement on the restoration of democracy and equal participation of all parties. The Libyan-Egyptian initiative has been welcomed by the government and by some members of the Northern opposition. Southerners, however, generally view it as a plot to undermine the consensus reached on the right to self-determination, which was not mentioned in the proposal. Much of what had been said in Durham must be understood in light of these new developments.

What follows are a number of important controversies that surfaced in the Durham meeting.

(1) The KPA as a Basis for Peace Negotiations?

On the first day of the seminar, a discussion developed among participants from the government and from the South about the KPA. Dr Ali el-Hag argued, in his opening statement, that the present government had made substantial steps towards peace, culminating in the KPA. This agreement addressed all the issues of concern, such as power- and wealth-sharing and citizenship as a basis for rights and duties; and it recognises the right to self-determination for the people of Southern Sudan. Now that this agreement had been enshrined in the Constitution, he wondered why the parties should continue to fight.

Dr David de Chand, spokesman of the South Sudan Independence Movement/Army (SSIM/A), which is party to the KPA, replied that his party had started to doubt the commitment of the government towards the agreement, as thus far no serious progress had been made in its implementation. Mr Bona Malwal agreed with Dr de Chand, and added that the government should not ask him to discuss the agreement as he had been no party to it.

Dr el-Hag replied that the government was working to solve problems related to implementation of the agreement. Further, he emphasised that the KPA should be viewed as a document for the whole of Sudan, and that, rather than rejecting it, those who are no party to it should reflect on its substance and come up with constructive ideas on how to modify it in order to achieve a cease-fire.

(2) Comprehensive or Compartmentalised Settlement?

A second controversy concerned the question of whether the Sudanese problems require a comprehensive solution, including the whole political spectrum, or separate solutions for the North and South. This discussion was conducted mainly between Southern participants and the Northern opposition, in the context of the developments brought about by the recent Libyan-Egyptian peace initiative.

The Southern participants, Mr Bona Malwal, Dr Peter Nyot Kok, and Dr David de Chand, criticised the recent Libyan-Egyptian initiative. As the Libyan-Egyptian proposals failed to mention the right to self-determination for the South, they were viewed as undermining the consensus achieved by all parties on this issue. The enthusiasm of some of the members of the Northern opposition for this initiative has made Southerners doubt the commitment of the NDA to their right to self-determination. These doubts, combined with those regarding the commitment of the government to honour the KPA, led to a renewed emphasis on Southern unity vis-à-vis the North and on the right to self-determination for the South.

Mr Bona Malwal and Dr David de Chand challenged the Northern opposition by arguing that although the North might have problems of its own, the real problem of Sudan is that of the South and this should be solved separately. Further negotiations should, therefore, be between the North and South in the IGADD forum, which should not necessarily include the Northern opposition as a separate party. The North, it was suggested, could resolve its internal differences in the Libyan-Egyptian forum.

Regarding the substance of further negotiations, both argued that a discussion on constitutional perspectives is irrelevant as long as the country had not decided on its unity. Now that all parties had agreed on the right of the South to exercise self-determination, the only useful subject for discussion was the arrangements that would govern the interim period leading to the referendum. As for themselves, Mr Malwal and Dr de Chand emphasised that they had lost their faith in the possibility of consensus between North and South. They promised that, although they would respect the outcome of the referendum, in the interim period they will try to convince the Southerners to opt for an independent Southern Sudan.

The observations of Mr Malwal and Dr de Chand aroused strong reactions from the participants belonging to the Northern opposition, especially when it turned out that Dr Ali el-Hag agreed with them that the IGADD and Libyan-Egyptian forums should deal with the problems of Southern and Northern Sudan separately, and that a discussion on transitional arrangements should have priority over a constitutional debate.

Against all this, Mr Ahmed Diriage, Dr el-Tigani Seisi, Dr Mansour el-Agab, and Dr Abdelsalam Sidahmed argued that the problem of Sudan was a comprehensive problem of which the South was only a part. Also, in the North there are several peoples that had been marginalised by the present ethno-

regional elite, such as those living in the Nuba Mountains and Southern Blue Nile. Moreover, the North itself was highly divided on fundamental issues, such as the issue concerning the religious or secular identity of the state. This comprehensive Sudanese problem, it was further argued, could only be solved by a comprehensive solution. It was suggested that a National Constitutional Conference should be convened in which all parties to the conflict would work together towards achieving a consensus on all the basic constitutional issues. A separate solution for the South, whether it is through separation or a federal status, would not solve the larger problem, and, therefore, would lead to nothing.

The Northern opposition participants were particularly unsettled by the calls of Mr Malwal and Dr de Chand for separation of the South. Self-determination, it was argued, was agreed upon by all parties; but the South could only exercise this right in the context of a comprehensive settlement. Both the government and those arguing for separation were thought to obstruct the achievement of such a comprehensive settlement by arguing for compartmentalised forums and a debate on transitional arrangements for the South rather than on constitutional issues for the whole of Sudan.

Although the Northern opposition participants agreed on the necessity of a comprehensive settlement, they differed in their assessments of what was the most appropriate forum for achieving a comprehensive settlement. Dr Seisi preferred the Libyan-Egyptian forum, Mr Diriage the IGADD, and Dr el-Agab preferred to amalgamate the two.

Dr Kok (SPLA/M), who arrived towards the end of the last day, appeared to somewhat reassure the NDA participants. He explained that there was a general doubt among Southerners concerning the sincerity of commitment of both the government and the Northern opposition to the agreements on self-determination, which had caused some Southerners to argue for immediate separation. Although he himself had serious doubts as to whether Sudan was a country capable of consensus, he thought that unity should be given a last chance in the interim period as provided for in the IGADD DOP.

Further, Dr Kok offered a way out of the controversy that had developed around the question of what should be discussed in further talks. Mr Wani Rondyang and Dr Peter Idenburg had already suggested, at an earlier stage, that the two options of discussions on transitional arrangements and constitutional perspectives might not be as mutually exclusive as they appear to be. They argued that all participants shared a common interest in discussing

principles on the basis of which Sudan should be ruled, be it during the interim period or for a longer time. In the same spirit, Dr Kok then argued that a discussion on constitutional perspectives, as organised by the IDF, was indeed very relevant, both for the transitional arrangements and as an exercise to conclusively prove whether Sudanese were capable of reaching a consensus on a constitution for a united country.

Dr Kok agreed with Mr Malwal and Dr de Chand that the IGADD forum was the most appropriate platform for continued negotiations, as it embodies the consensus on the right to self-determination. In this context, a disagreement surfaced concerning the interpretation of the IGADD DOP. Mr Diriage argued that the DOP, in fact, envisages a united Sudan, and that it provides for self-determination only after the other principles, such as power- and wealth-sharing, and separation of religion from the state, had failed. Dr Kok and Mr Malwal, on the other hand, stressed that according to the DOP the right to self-determination for the South was not conditional on the other principles.

(3) Constitutional Issues

The question of what the substance of Sudanese constitution should be drew the government into a discussion with participants belonging to Northern and Southern opposition. The latter group started by reiterating their views on the basic principles of a future Sudanese constitution. Dr Sidahmed argued that a constitutional debate should start with an 'irreducible minimum' of consensus on shared responsibility for Sudan, accountability of government, and a framework of rights based on citizenship. Other Northern and Southern opposition participants, such as Dr Seisi, Mr Diriage, Dr Medani, Dr Riak, and Dr Kok seemed to agree that a future Sudanese constitution should be based on the following principles:

1. A recognition that Sudanese society is composed of a multiplicity of racial, ethnic, cultural and religious groups that should all be equally respected.
2. The political power and economic resources in the country should be shared by all these groups on equal basis.
3. The country should be governed on the basis of extensive decentralisation, with a federal or confederate structure.

4. The country should have a democratic system, including accountability of government, the rule of law, separation of powers, independence of the judiciary, multi-partism, and a system of rights and duties according to international standards.
5. As to the identity of the state, it was agreed that this should be founded on a system of rights and duties based on citizenship. Some stated more explicitly that the state should not be based on religion.

A point of disagreement among the above mentioned participants concerned the question of whether Sudan should have a presidential or a parliamentary system of government.

The government participants, Dr Sumayya Abukashawwa and Dr Ali el-Hag, replied that most of the issues mentioned had already been catered for, particularly in the new 1998 Constitution which provided for power- and wealth-sharing, federalism, democratic government, and rights on the basis of citizenship. The interrelation between religion and the state, however, could not be put to discussion. This interrelation was a fact of life in Sudan and had never constituted a real cause of conflict.

The opposition participants then turned to criticise the contents of the present 1998 Constitution as well as the procedures leading to its promulgation. A constitution, it was argued, should be the codification of a consensus by all stakeholders. However, this constitution was imposed by the present government without consulting large sections of Sudanese society, and was designed to give a semblance of democratic legitimacy to the government's objective of establishing a theocratic state. The content of the 1998 Constitution was criticised in particular by Dr Medani. He argued that the constitution discriminated on the basis of religion, violated the independence of the judiciary, failed to mention a number of basic rights, and introduced the ambiguous concept of '*tawali*' instead of outright political pluralism. Further, he observed that a number of laws were in force in Sudan that violated the constitution itself, such as the Public Order Laws which discriminate against women. Several participants criticised the federalism introduced by the present government as being federalism in name only and in fact designed to strengthen the grip of the central government on the regions.

An important point of disagreement emerging from these discussions concerned the status of the present 1998 Constitution in further constitutional talks. On the basis of their aforementioned analysis, members of the opposition

rejected the present constitution, and demanded that a constitutional conference should be convened, where all parties to the conflict would be involved in drafting a new constitution on the basis of national consensus.

Dr el-Hag replied that instead of rejecting the present constitution as illegal, the opposition should appreciate that a former military government had now moved to civil rule and had gone through the procedures of making a constitution. These procedures, he argued, were perfectly legal and finalised by subjecting the constitution to a referendum in which 9 out of 11 million Sudanese voted for it. After having done all that, it would be illogical to erase the whole exercise and start all over again in a constitutional conference. On the other hand, however, Dr el-Hag emphasised that the present constitution could be amended, that in fact the constitution itself provided for its own amendment. He, therefore, viewed it as a more pragmatic approach to take the present constitution as a basic document for further discussions, on the provision that there were many areas that could be improved, changed, or even deleted. He further suggested that in order to arrive at consensus, the present constitution should be compared with the Asmara Declaration to see the differences and similarities. In the same vein, Dr Abukashawwa argued that Sudanese people could not be made to wait until all political problems had been solved, that they had a right to exercise constitutional options about how Sudan should be governed. She argued that it should be appreciated that the government had started this exercise. This may not be perfect or ideal, but at least it was a start and further discussions should build on what had been achieved so far.

Michel Hoebink, IDF

PROCEEDINGS OF THE SEMINAR

Opening of the Seminar by Dr Anoush Ehteshami

Welcome by Professor Gerald Blake, Principal of Collingwood College

Dr Peter Idenburg: opening and explanatory remarks

Objectives of the Durham Seminar

1. The two objectives of the seminar are interconnected. On one hand, to evaluate the peace efforts to prepare for the 'Conference on Constitutional Perspectives on Sudan' next year. On the other hand, the preparatory discussion on constitutional perspectives should enhance further peace efforts.
2. Putting the seminar into a broader perspective should not make us forget about the limitations of the aim of this seminar and of the project as a whole. It will remain a project whose subject is constitutional perspectives and not peace or the solution of the problems of Sudan. By keeping ourselves to this limitation, we will have the best chance of delivering a contribution to the peace in Sudan.
3. It must also be clear that this will not be a 'negotiations conference'. The negotiations will have to take place elsewhere. Our ambition should be to contribute to the preparation of useful tools for those who have the mandate to negotiate. Our project should be supportive to all the serious peace efforts, like, the IGADD negotiations and other more recent initiatives, in which other parties are involved. Therefore, an assessment of the present political conjuncture should provide an important element for the discussions.
4. One of the major objectives of IDF, which is implicit in most of its activities, is to promote communication. Although it should be clear that conflicting parties, for strategic and tactical reasons, limit their communications with other parties, it must be also clear that in the long run information and a good understanding on what is being thought elsewhere is in everybody's interest. For this, more is needed than just

negotiations. Negotiations can lead to very specific and limited information.

5. Therefore, in particular for this seminar, it is more important to get informed about others, than to try to convince them. This should be the beginning of an ongoing process of exchange of ideas, more specifically, on the subject of constitutional matters, within a growing network of contacts. In developing this network, the use of the modern media, like, the Internet, could be helpful.
6. Since agreement on matters of substance cannot be considered as an achievable goal for this meeting, agreement on matters of procedure is to be considered as a more promising objective. Agreement on procedures, on what should be discussed and how this should be discussed, can make this seminar a success.

BOC

FIRST SESSION

EVALUATION OF SUDANESE PEACE EFFORTS

Chair: Dr Peter Woodward

On procedure: because of the absence of Dr Kok, Mr Malwal will be included in this session as discussant of Dr Ali el-Hag's statement

Dr Ali el-Hag (statement)

Peace Efforts and Constitution-making

It would be unjust to deny the existence of efforts towards peace before the inception of the current government of the National Salvation Revolution (NSR). However, two main stumbling blocks were behind the drawbacks of the peace process during the second half of the 1980s.

First, the then leadership of the SPLA/M persistently refused to recognise any of the government negotiating teams as in any way representing the government as such, or the people of Sudan. The maximum the negotiators could get under the former partisan administration from the rebellion movement was recognition of their representation of their respective political parties. Both Sadiq el-Mahdi, the then Prime Minister of Sudan, and Mohammed Osman el-Mirghani were no exception to that. This fact seriously affected, in a negative sense, the actual scope of the mandate claimed by the then government negotiators.

Secondly, by looking at the agenda of the negotiations that took place under the previous government, it becomes clear that the negotiators from both sides missed the real issues and dwelled on procedural rather than substantive matters. So, even regardless of the problem of mandate and recognition, the negotiators were practically beating around the bush.

As for the efforts of the National Salvation government, they may be divided into six distinct phases: The preparatory phase; the negotiations; the

agreements signed; the implementation of the agreements; the follow up phase; and the future of the process.

The Preparatory Phase

The current government tried to avoid the mistakes of its predecessor, and made recourse to the people its first step towards tackling the most serious of all the problems facing independent Sudan. Hence, the National Conference on Peace Issues (NCPI), which started only a few weeks after the inception of the NSR government, was convened. Hundreds of participants were allowed to join in, with the intention of representing all the shades of the political spectrum, as well as the tribes, regions, age groups, etc. Later, the negotiating team of the SPLA/M agreed with the government team on the findings and final recommendations of the NCPI as forming 'a good foundation for peace negotiations'. If anything, the NCPI conclusions at least covered all the substantive issues worthy of discussion.

The Negotiations

Negotiations have always been carried out through government delegations recognised as such by the rebellion movement, in contradistinction to the case with the previous government. Although no final agreement was reached in any of the rounds of talks, each of the peace sessions took the parties remarkable steps forward. Among the negotiations that could be considered as landmarks in this regard are: Addis Ababa - August 1989; Nairobi - December 1989; Frankfurt - January 1992; Nairobi - May 1992; Abuja I - June 1992; Entebbe - February 1993; and Abuja II - April/May 1993; and simultaneously with Abuja II the government was negotiating with the then Nassir faction of the rebellion, namely, SPLA United.

In the Frankfurt round, the government signed a declaration recording mutual understanding among the negotiating parties on the issue of self-determination, which was called the right for the people of the South 'to governance in Sudan'. The same conclusion was reached, simultaneously, with the other faction in Nairobi with another team negotiating for the government, led by Brigadier Baki-i Hassan Salih, who is a member of the NSR Command Council, and so on. These are mere examples of several multilateral and bilateral accords that took place inside and outside Sudan with either one or all the factions.

The Agreements

As a result of all the efforts mentioned above, three agreements were thereafter signed in Sudan. They were preceded by the signing of a Political Charter, on 10 April 1996, which formed a kind of a 'constitutional framework' for the agreements to follow. These were the KPA (21 April 1997); the Fashoda Peace Agreement (1997); and the Nuba Mountains Peace Agreement (1997). All these agreements, taken together, form a significant part of the 1998 Constitution of Sudan because the principles included therein were enshrined in the Constitution, especially because Article 139 of the Constitution, which codified the 'basic provisions and fundamentals', recognised the peace agreements as basic and fundamental.

The Implementation Phase

Once the peace agreements had been signed, the government embarked upon putting them into effect, in some tangible terms. Structurally, a Co-ordination Council for the South was established with Dr Riek Machar, ex-leader of SSIM, as President. Dr Lam Akol, leader of the rebel faction in Fashoda talks, became Federal Minister of Transport, while Commander Mohammed Haroun Kafi, leader of the Nuba Mountains Group, became State Minister of Tourism. Leading figures from each of the three factions held high positions at both federal and state levels, either in the executive branch of government or, after being duly elected in the appropriate constituency, in any of the representative positions in the federal or state legislative councils or political grouping.

The overall representation of people from the South in the central government has by far exceeded any representation in any of the post independence governments in Sudan, indeed in any administration in the history of the country. This process of increased Southern representation, however, did not start only after the three peace agreements. As part of the aforementioned pre-emptive process of the government, citizens from the Southern part of the country have held senior and governmental positions since the inception of the NSR government back in 1989. Power-sharing has thus had some solid roots, not only because of a signed agreement, but also as a living reality.

As to the distribution of wealth, or what the agreements call wealth-sharing, this has been catered for at both constitutional and lower legislation levels, following its inclusion in the peace agreements. A National Wealth Reallocation Committee is currently in operation to see to it that the text is realised in actual practice. In fact, during the period preceding the signing of

any peace agreement, the government established a special department, the Peace and Development Corporation, whose function was to channel necessary resources towards the South. The Corporation was financed by both government and popular fund-raising efforts. It was a realisation of the equitable concept of 'positive discrimination', in favour of the less developed areas of the country, among which the South and the Nuba Mountains area rank high. Other less developed areas of the country would certainly benefit from the same concept, which is backed by legislation.

The process of implementation continued unabated, not only through government endeavours but also through initiatives made by the other peace signatories. In January 1999, for example, and benefiting from the now codified point of agreement, the Riek Machar group of politicians quit the ruling party, the National Congress, and formed their own political party, Sudan Salvation Front.

The Future of the Peace Process

Looking ahead into the future, there seems to be one single main objective which, if achieved, one may then talk of a prosperous Sudan in the making. That single main objective is peace.

The peace endeavours cannot be confined to home efforts alone in today's speedily globalising world. Among the foreign participants in the process are the major powers of the world, taking part as friends, partners, mediators, facilitators, good wishers, etc., and the list may be added to in the years to come. Although foreign efforts are welcome, there are real problems to be tackled in this regard. For example, while the government is rightly pursuing a 'peace management' approach to the question of conflict in Sudan, the American administration is pushing forward a 'war management' alternative. The domestic approach is one targeting a 'win/win' objective for the people of Sudan, while the American approach is playing for a 'win/lose' endgame. The latter is a recipe for division and instability, while the 'win/win' approach looks for unity, or, as the KPA envisages, separation in peace. Indeed, that is a genuine management of peace. The government is therefore reasonably sceptical of some, and by no means all, of the foreign contributions towards the achievement of peace in Sudan.

As for the current forum for peace mediation, the IGADD, it is not short of problems of its own. Firstly, the organisation, which is formed mainly of countries neighbouring Sudan, includes some members who were in conflict

with the same country to which they want to bring peace. For some time, these members were three out of the four IGADD members. Now at least one is clearly hostile while another is not in so a fortunate position as to help bring peace to Sudan; and I assume you are too knowledgeable of the region to need names.

Secondly, the core substance of IGADD, which crystallised in the famous IGADD DOP in 1994, has become redundant after the KPA of 1997. The DOP talked of either a peacefully united Sudan where both the North and the South agree on the principles of governance, or, failing that, the South should be allowed the right to self-determination. The KPA said precisely the same, by providing for a transitional period after which the people of the South may decide on either unity or separation. As we have already seen, the roots of this thinking go back to 1992 when the government agreed with the Nassir group on similar lines. This is another proof that peace-making in Sudan is taking shape as a continuum, and as a cohesive process, where each phase benefits from the other phases; the former phases form the foundation for the ones that follow.

Thirdly, IGADD, originally responsible for the problems of drought and desertification in the relevant regions of Africa, has found itself now derailed into this business of peace in Sudan. The mechanism developed from an organisation of 'members' of IGADD, to 'friends' and finally 'partners' of IGADD. The current secretariat tends to be a body of international bureaucracy, lacking the flexibility and versatility needed for a conflict resolution or mediating body.

Fourthly, the current shape of IGADD as an international bureaucratic body is becoming home for some hidden agendas, some of which might be originating from some self-appointed 'friends' or 'partners', to the detriment of the whole peace process and the interests of the people of Sudan.

In contrast, direct negotiation, such as the example of Abuja II, is necessary if transparency, neutrality and genuineness, which are essential elements for the success of any peace process, are to be guaranteed. Face to face approach is the best means to allay unfounded fears and stereotypes on both sides and build confidence among the negotiating parties. But one may ask, and Sudanese government and people certainly do: are the individual foreign mediators working in an environment of peace culture or that of war culture, with their own vested interests? Are they really intending to bring peace to Sudan? These questions remain open.

Dr el-Hag added the following comments:

A major complicating factor with regard to the KPA is that people tend to personalise such agreements. We would like you here to de-personalise the KPA. When you read it on the theoretical level you will probably find it acceptable. I am not saying that the KPA is the best or the final thing, but I do say that this is a document which addresses the issues of concern to us. Furthermore, it is a document that addresses the whole of Sudan, not only the issue of relations between the North and South.

In order to show that many important issues, which people keep talking about, have been addressed in the Agreement, I will highlight an important passage from the KPA. Chapter 3 of the KPA, on political issues and constitutional-legal matters, reads:

- '1. Sudan is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. Islam is the religion of the majority of the population and Christianity and the African creeds are followed by a considerable number of citizens. Nevertheless, the basis of rights and duties shall be citizenship and all Sudanese shall equally share in all aspects of life and political responsibilities on the basis of citizenship.
2. Freedom of religion, belief and worship shall be guaranteed.
3. A suitable atmosphere shall be maintained for practising worship, *da'wa*, proselytisation and preaching.
4. No citizen shall be coerced to embrace any faith or religion.
5. There shall be no legislation which adversely affects the religious rights of any citizen.'

After its conclusion, the KPA was transformed into a constitutional charter and now it has become enshrined in the Constitution. So if there is any doubt about the seriousness of the Agreement, I can say that now it is enshrined in the Constitution! Now that self-determination is enshrined in the Constitution, the question I want to ask you here is: why should we fight? If you are for separation, you do not need to fight and if you are for unity, you do not have to fight either; you can just put your vote in the ballot box and wait and see. I want to ask you to consider this point seriously.

I want to draw a line between what has already been enshrined in the KPA and whether this has been put into practice or not. After the conclusion of the KPA, we embarked on its implementation. We have mobilised all the people in the South to elect governments and parliaments. Most - I do not say all - of the people who have been part of the Agreement were participating in government whether at the federal or state level. But still, there are many problems with implementation, which we are trying to solve. Recently, a committee has been established chaired by the Vice-President and assisted by Dr Riak Machar, in order to revise and evaluate the implementation.

As I said in the paper, we welcome outside mediation, but we prefer direct contacts. The same applies to the Libyan-Egyptian peace initiative.

Dr Pauline Riak (discussant)

In the abstract he sent to us prior to this seminar, Dr el-Hag explains three ways in which the government in Khartoum has initiated peace efforts, namely, pre-emptive peace policies, the achievement of cumulative agreement points, and a natural process of acculturation.

By pre-emptive peace policies he means the government's implementation of policies that would otherwise remain on the demand-list of the fighting factions, such as federalism and power- and wealth-sharing.

As for the cumulative agreement points reached during the reign of this government, Dr el-Hag lists a number of examples. Firstly, he mentions agreements on relief issues such as Operation Lifeline Sudan (OLS). Secondly, he mentions agreements on the basic principles of governance for Sudan, such as the principles that Sudan is a multi-ethnic, multi-religious and multi-cultural society. Finally, he refers to agreements on the distribution of power and resources between the Federal government and the states, by which the South is accorded a special status. He specifically mentions the Frankfurt agreement according to which, after a transitional period, the people of the South may decide their own political future.

As a further development, that in his view enhances the peace process, Dr el-Hag mentions the natural, spontaneous and voluntary process of acculturation between Northerners and Southerners, which took place following the movement of people from Southern states to the North.

In Dr el Hag's view, the peace process in Sudan has been a major contributor to the constitution-making process. Most of the agreement points mentioned above, he claims, have found their way into the present 1998 Constitution. He specifically mentions the Khartoum and Fashoda Accords, which have now been enshrined in the constitution. This is in addition to the principle of citizenship as a basis for determining rights and duties, and the right to form political organisations.

Dr el-Hag further argues that as the 1998 Constitution itself legally provides for the possibility of constitutional amendments, the current wave of contacts and negotiations between the government and the Northern and Southern opposition parties is part of the process of peace- and constitution-making.

In discussing Dr el-Hag's views, it is important to remind ourselves that Sudan began its independence by amending the Self-Autonomy Act of 1953, which was to become the Transitional Constitution of 1956. During the next forty-three years, the country has had three transitional constitutions, two permanent constitutions, and several constitutional or republican orders. During the same period, the peoples of Sudan have been victims of the longest running war in the history of the world, whose death toll is estimated at 2.9 million. This outnumbers all the fatalities in recent violent conflicts in Afghanistan, Bosnia, Burundi, Chechnya, Kosovo, Rwanda and Somalia combined.

Dr el-Hag's statement is putting the cart before the horse. A constitution is the reflection of the prevailing system's values, norms and cultures. Whenever a system is just and fair, the constitution tends to be just and fair and vice versa. The system in Sudan since the so-called independence has been unjust and reflects asymmetrical relations between the vast majority of the ruled and the minority of the ruling cliques in Khartoum.

One reason for the violent and persistent crisis in Sudan is that there has never been an agreement on the fundamentals that can guarantee stable constitutional development. Four decades of violence and the failure of successive governments in Khartoum to resolve this crisis have led to the erosion of the regime's credibility and legitimacy as a peace-maker. Thus, the ruling regimes have been perceived as a part of the problem.

The culture of human rights has to be a part of the culture of constitution-building in Sudan. This is the most fundamental issue for constitutional consensus. The nation has never had a constitution that was derived by consensus of all the stakeholders. The result is that Sudanese people, for

almost half a century, have always been at war among themselves. Today, there are active wars in the East, West, and South.

The current constitution was drafted by a small group of individuals who are hardly representative of the majority of Sudanese people. Further, the drafting was done in an atmosphere of authoritarianism that inhibits insightful participation of all stakeholders. Women, for example, who form more than half of the population, are relegated to a status that would not allow them to participate meaningfully in the development processes of their own country. That is not a luxury that a country as underdeveloped as Sudan can afford.

The Khartoum and Fashoda Accords, which Dr el-Hag says have become part of the 1998 Constitution of Sudan, are not being honoured or implemented, two years after signing them. The question here then is, if these Accords are in the Intensive Care Unit or dead, can the 1998 Constitution be considered a viable instrument for all Sudanese peoples?

The Asmara Agreement and the IGADD DOP are perhaps more important tools for conducting a dialogue that has the potential for popular consensus.

As for Dr el-Hag's remarks on the government's relief policies, it is important to note that no one anywhere is fooled by the warring parties' strategies related to humanitarian assistance to Sudanese who are in the war bombarded southern sector of Sudan. The world watched as thousands of Sudanese (mainly unarmed women and children) died from hunger, while grain was being exported simultaneously from the same country- and while the regime in Khartoum delayed the approval of airlifting food by the UN community to its own starving citizens. It is difficult to see that, as Dr el-Hag does, as a measure of cumulative agreement points, related to peace which enhances constitutional making.

Regarding Dr el-Hag's views on the acculturation process that is going on, it must be observed that in order for natural processes of acculturation to take place among people, there must be reciprocity. What is occurring in Khartoum, is a migration of citizens, within their own country, from the ravages of war in the South to the ravages of poverty and discrimination in the slums of their own capital. There they are further exposed to calculated and systematic socialisation through socio-economic deprivation into Islamic and pseudo-Arabised norms and values. There are good things in Arab culture and good things in African culture, but the newcomers to Khartoum are being socialised into the worst scenarios of African and Arabised situations. This process has

its own dialectics. Massive attempts on the part of the state to de-humanise the new arrivals in Khartoum, have resulted in a new awakening of cultural identity as well as suspicion and rejection of what is perceived as alien and oppressive.

Finally, it is not the absence of a constitution that has created wars in Sudan. The wars have been the result of decades of broken promises by successive mono-ethnic and mono-cultural regimes in Khartoum to the people of Sudan, the systematic development of underdevelopment and the resultant marginalisation of areas and peoples of Sudan. In addition, the structural injustices have enhanced the imposition of ideological, religious, linguistic and non-indigenous cultural norms on economically disadvantaged citizens.

In order to comprehensively address and find sustainable solutions to the aforementioned cob-web, and relate these to constitution-making in Sudan, we need, as nationals and friends of Sudan, to very honestly and openly assess the root causes of the persistent nature of: human right violations, poverty, unequal development, structural injustices, oppression of women and other marginalised groups, self-determination, power- and wealth-sharing and the relation between the state and Islam.

We further need to formulate strategies to solve these problems and to ensure that the contemporary Khartoum government, and other potential ruling elites, will honour the wishes of the majority. If a non-violent approach is adopted, this may best be achieved through national debates that do not function only as 'safety valves', designed to contain rather than promote change. Such debates need to be as reconciliatory, inclusive, integrated and accommodative as possible if they are to succeed. National debates that are dominated by forces of retribution are not likely to succeed in Sudan.

The significance of national dialogue as a conflict management tool cannot be overemphasised. The democratic transition process is fraught with conflicts of interest and values between the incumbent regime and the opposition, among various ethnic groups that constitute a heterogeneous Sudan and among various economic classes. National debates can potentially play an important role in consensus building necessary in designing a new 'democratic order' acceptable to all.

Through reconciliation, mediation and arbitration of conflicting interests, national debates may resolve 'statements' that have stalled the peace process. These debates can also build into the new constitution self-regulating

mechanisms capable of resolving conflicts in Sudan. However, the performance of national dialogue will depend heavily on the political will and seriousness of the warring and potentially violent groups, pressures that are extended by other concerned actors, and how the process is perceived by the incumbent regime.

Dr Abdelwahab el-Affendi Osman (discussant)

When Dr Peter Idenburg first came to see me to discuss this seminar, we readily agreed that the last thing we need is another peace initiative that does not look at the reasons why earlier initiatives have failed. I think the important question which should lie at the heart of our discussion is why in spite of so many peace initiatives there is still war in Sudan? In fact the war has expanded now to the East. Even the KPA, rightly qualified by Dr el-Hag as one of the positive steps, has generated disagreements about implementation as well as some side-conflicts among the signing parties, to the extent that war has now broken out in Unity State, in which there had been no war before.

At first sight, an important problem here is related to procedure. The Abuja-process, for instance, suffered from a lack of consistency. The first meetings in 1992, in which two Southern groups met with members of the government, were to be resumed after a month or two. In fact, they were resumed with different Southern groups after a year, during which many things had changed. The main meeting, which was postponed for a month, in fact never took place. The same inconsistency characterised the IGADD process.

Such procedural issues, however, seem to cover a more fundamental problem which is that this lack of progress seems to suit everybody involved. All parties are not really interested in peace, including mediators such as the IGADD partners. Mediators, such as Eritrea and Ethiopia and also the US, have sometimes made it explicit that they are not interested in a peace deal that does not cater for their own grievances. The implicit complicity of the government and the SPLA/M in such reluctance reveals that this in fact suits them very well. Otherwise they would certainly have said that these procedures do not suit us, so let us search for more effective ones.

Why are the parties not interested in peace at the moment? This is because they believe that, given the present balance of power, they will not get the deal they want. On the contrary, they believe that time and war can achieve their objectives better than a peace deal at the moment. I think we need to reflect very deeply on what the real problem is. People tend to analyse the conflict as

resulting from cultural differences or political disadvantages. As for me, I think that the main problem lies in the politicians' perceptions of their own interests.

We have seen at different times in the past how identical agreements have been concluded by different groups. In 1986, the Umma Party made an agreement with the SPLA/M to which the DUP was not a party; and in 1988, an almost identical agreement was concluded between the SPLA/M and the DUP, but then the Umma Party was not a party to it. The agreements were almost identical but the respective DUP and Umma politicians did not see it as their interest to join in. Likewise, the KPA and the NDA Asmara Agreement of 1995 were almost identical, but at the different moments of their conclusion, the interests of the politicians were not served by that agreement or the other.

I used to believe, for a while, that third parties, such as intellectuals or concerned personalities, who are not on either side of the conflict, could come up with some imaginative proposals that had escaped the politicians. They would find some magical formula that would lead to peace. Now I am not so sure of this because without the political will of the major parties peace can never be achieved.

Self-determination seems to be such a magical idea, a last resort. But I do not think that any of the parties are happy about self-determination as a solution. The NDA explicitly says that self-determination is a mechanism to create unity. The government agrees with this as well as the SPLA/M leadership. They all claim that unity is a priority, which means that self-determination, from their perspective, is not a way to resolve the issue.

Mr Bona Maiwal (discussant)

If not for the long history I have with the organisers of this seminar, I would have not probably come to this meeting. The title of this seminar 'Constitutional Perspectives on Sudan' presupposes a political agreement, which in fact is not there. All of you in this room know that we are asking ourselves whether we belong to the country called Sudan. In spite of this, the whole international community, including the organisers of this seminar, are trying to seek 'peace for Sudan', implicitly assuming that Sudan is one country which should be put together in agreement. This assumption is a fallacy! This is a country that has been contested as long as it has been there. You cannot discuss the constitution of a country that you do not agree upon.

Commenting on Dr el-Hag's statement, I want to say that all agreements are personalised. The KPA will by necessity remain a personal, specific agreement, an agreement between those who signed it. You cannot sign an agreement with a certain party and then expect others, who are not signatories to it, to say that this agreement caters for our interests, so we accept it. You cannot really proceed from there. It really is a non-starter to keep referring to this agreement in every forum. I am ready to discuss the points made in the agreement but I want to emphasise that I absolutely cannot engage in any discussion, which accepts this agreement as a constitutional document.

Dr el-Hag says that now that the principle of self-determination is accepted by the government, there is no reason for anybody to go on fighting. I would fully agree with him if not for the fact that I cannot take him seriously on this point. Thus far, the government has not committed itself to implementation of self-determination. Riak Machar is complaining because the government is not moving ahead with the KPA. Meanwhile, the government is multiplying all these armies in the South trying to avoid some responsibilities. In fact, the present regime believes in a military solution. One of the reasons for this regime to take power was its belief that the previous government had not been pursuing the war seriously enough.

Therefore, I want to go beyond the announcement that self-determination is accepted as a principle and ask Dr el-Hag to commit himself to actually starting the intermediate processes of implementation in an interim period, whether through the IGADD or another forum, to work out the security system in the South and discuss with us what we will do with all these armies. If we are able to put interim and security arrangements in place and agree on a mechanism of international monitoring, then I would readily agree with Dr el-Hag that there is no need to go on fighting. But when Dr el-Hag says that this government is worthy enough to carry out the mechanism of self-determination on its own, I think he will not be able to find any serious-minded Southerners to conclude an agreement with.

Dr David de Chand

As a spokesman of SSIM/A, I was involved in drafting and concluding the KPA.

We never considered the KPA an absolute document, as not the whole South was part of it. The agreement was based on the IGADD DOP. By signing the KPA, we have not abandoned our commitment to the IGADD peace process

and the DOP. We do not accept any solution that is not the result of the IGADD process.

By signing the KPA we wanted to give peace a chance, but now we are disappointed. The government has failed to implement the agreement; it has failed to honour what it has agreed on with us. In fact, the government has deliberately worked towards the fragmentation of those who signed the KPA. The present war in Unity State is the result of this. The war is fought simply because there is oil in that province and the government follows a policy to displace its people.

As for Dr el-Hag's words on power- and wealth-sharing, I can tell you that up till now Southerners are not being fully represented in the government. The agenda of this government is Arabisation and Islamisation and if you are not a Muslim you are not part of it. Until now, people have been sacked to be replaced by government sympathisers. We Southerners do not have a single under-secretary in any ministry. We do not have any people in the key-ministries, such as those of finance, foreign affairs, defence, and interior.

The result of all that is that Dr Riek Machar, and those who signed the KPA, are now asking themselves how genuine this government is.

We have signed the KPA because we want the people in the South to decide for themselves, through the ballot box, whether they want independence or not, as it happened in East Timor.

As for us, the SSIM/A, we want an independent Sudan, as the name of our movement indicates. We think there is no better solution than partition. We have been at each other's throats for forty-four years; we do not trust each other; we have nothing in common, no common moral ground. Our belief in independence has been confirmed by our experiences since we concluded the KPA. In fact, we have lost our confidence and trust. We have come to the conclusion that it does not matter who is in power in the North, the previous government, the present one, or the NDA; they are all the same animal wearing different clothes. None of them honour their agreements with us. Consensus cannot be built in Sudan: all major ingredients for building consensus have been destroyed. Too many agreements have been dishonoured.

Therefore, in the next rounds of IGADD we should only talk about modalities of how the right to exercise self-determination should be implemented in practice. A specific date must be agreed upon, and a model on how Sudan will

be ruled during the interim period, and the UN must be mobilised to supervise all this. We want the IGADD and the IDF to push for a specific date.

Mr Ahmed Ibrahim Diriage

I agree with Dr el-Affendi that so many peace initiatives failed because neither party has been really interested in peace. Everybody, even Dr Ali el-Hag seems to agree about the issues underlying Sudanese problem and yet we have a war. The people in power do not really want to solve these problems.

In Sudan, those ethnic groups who were educated by the British took power after independence. They adopted either Arabism or Islam as ideologies to justify their rule and as a rallying point to include some and exclude others. Thus, the country became divided. The present regime combines Arabism and Islam, but it does not work. Yet they refuse to share their power and to include those who have been left out.

In South Africa, there was a similar situation of a small group dominating the rest of the nation in the name of a racist ideology. In the end, the government realised that if it does not reach a consensus, it may lose its power. So, eventually, it was the government who took the initiative to call all South Africans to sit together and reach a consensus. Now also Dr el-Hag tells us that we should meet directly face to face. But are you really ready to do that? Are you ready to admit that this ideology has failed to solve the problem, that, therefore, we have to discuss and even abandon it, and that we have to sit together as Sudanese people and find a new formula? If you are prepared to do this, I will carry it to the NDA and sponsor it!

Separation of the South will not solve the issue because our problem concerns the whole of Sudan and not only North-South relations. In the North, there are non-Arabs and non-Muslims who are excluded by the ruling ideology. In Darfur and Kordofan, Arabs and non-Arabs are fighting each other.

Dr el-Tigani Seisi

I believe that the only platform in which Sudanese problem can be resolved is a constitutional conference, in which all parties to the conflict should participate in seeking a consensus on all the basic issues.

Dr el-Hag made an erroneous comparison between the peace efforts made by this government and the previous ones. The peace efforts before the military

coup have not concentrated on procedures rather than issues. They were rigorous in their discussions of the basic issues facing Sudan at that time. These discussions almost culminated in a peace agreement in 1989. If not for the military coup, this would have led to a constitutional conference.

I agree that it is questionable whether the present government is genuine in its efforts towards peace. In his statement, Dr el-Hag lists the foreign participants in the peace process and then adds: '... and the list may be added in the years to come'. This indicates very clearly that this government is in fact planning to stall the peace process for the coming years.

The strategy of this government is to create divisions to weaken the movement, particularly in the South. These divisions are clear in our debates here, which now turn into debates between the people of marginalised areas, whether from this or that side. Partial agreements such as the KPA only serve this aim of division and lead to nothing.

Dr Mansour Yousif el-Ajab

Let me say something about IGADD and the recent Libyan-Egyptian initiative. The problem of IGADD is its exclusivity. The problem of Sudan manifests itself strongest in the South, but other marginalised people are equally suffering. Regarding the Libyan-Egyptian initiative, I think that Egypt, and other countries in the international community for that matter, have a legitimate right to be involved as our problem affects their interests. Moreover, they can help us by acting as guarantors of the agreements reached. Therefore, I think we should merge the two initiatives together and reach a realistic solution that addresses the complexity of the problem internally and regionally.

Dr David de Chand

We Southerners will not accept any conflict resolution outside the framework of IGADD. No other initiative such as that of the Libyans and Egyptians can supersede it.

The Libyan-Egyptian initiative is a forum devised by the Egyptians and Libyans to prevent the people in the South from exercising their right to self-determination. 'Amr Musa was quite explicit about this in Washington recently. In spite of Egypt's struggle for the Palestinians to exercise their right to self-determination, he campaigned in the State Department and the Congress for the suppression of the exercise of self-determination by Southern

Sudanese! The Egyptians may have legitimate interests in Sudan, but these interests cannot be legitimately used against us leading to our extinction.

IGADD cannot be expanded. IGADD should remain as it was designed, namely, to deal specifically with the problem of Southern Sudan. The IGADD DOP deals specifically with the issue of the South.

There may be other problems in Sudan, in the Nuba Mountains, the Southern Blue Nile, the Eastern Sudan, but the problem of the South is different. From Abboud until today, all Northern governments have pursued a hidden agenda to rob the Southerners of their land and destroy their cultural heritage. The present government is thus pursuing a policy of displacing Southerners and claiming their land. But also the NDA does not really want the South to exercise its right to self-determination.

Mr Ahmed Ibrahim Diriage

The IGADD DOP is relevant for the whole of Sudan, and, in fact, it envisages a united Sudan. If it were designed exclusively for the South as an independent country, why should it argue for the separation of religion from politics, and citizenship as the basis for national identity? At the end of the declaration, it is stated that if these principles are not acceptable, then the South should be given the right to self-determination. So the DOP envisages a united Sudan on the condition that certain things happen. Self-determination comes only after the people have refused the other proposals such as power-sharing and federation.

Mr Bona Malwal

Our interpretation of the DOP is indeed quite different. The principle of self-determination is not conditional upon the maintenance of other principles. These other principles are merely meant to govern the interim period, so as to give those who believe in unity a chance to convince the Southerners not to separate. During the transitional period, Southerners can see whether promises are kept.

However, I would like to elaborate now on this larger issue of compartmentalised peace processes. In my view, basic mistakes have been made from the beginning. In the 1995 Asmara Declaration, the SPLA/M and the NDA agreed, for the first time, that we needed a solution that included all political forces in Sudan. In my view, the SPLA/M should have forced this

issue on the IGADD agenda from the very beginning, saying: here we have a declaration from our allies in which they accept the six principles of the DOP, including self-determination. We want these people to have presence in this conference. But the SPLA/M did not want to do this. The consequence was that if the South is now going to have an agreement with the government, it will be to the exclusion of the NDA, which will understandably do everything to prevent such an agreement.

As they had been excluded from IGADD, the NDA turned to Libya and Egypt for a new forum. As a result, we now have these two-track peace processes: the IGADD which concerns North-South relations and the Libyan-Egyptian forum which concerns the North-North relations, those in power and those out of it. The two processes can never be merged, because the Egyptians will never accept the principle of self-determination. So how do we proceed from here?

I think that we have to recognise that, at present, we have a South-South and a North-North situation. The South has its differences, which it has to sort out by itself; these are internal problems which have nothing to do with what the South should achieve in its relation to the North. The North is divided between government and opposition and tries to reconcile itself through the Libyan-Egyptian initiative. I expect that there will be a Northern reconciliation agreement very soon, probably around the end of this year, and I think that Southern Sudanese should welcome this. Although the Libyans and Egyptians will not accept self-determination for us, some of the parties in the NDA will probably insist on peace as a condition for reconciliation, as they would not be comfortable in an agreement that makes them part of the war with the South. Furthermore, if the South is able to reconcile itself as well, this will create a clear North-South situation with North-South negotiations. This, I think, is the most comfortable situation. All this North-North and South-South division is really diffusing a very clear-cut situation.

Dr el-Tigani Seisi

Self-determination is no longer a controversial issue, as the DOP has been accepted by both the government and the NDA. The real question is now whether this right should be exercised within the framework of a North-South settlement, or within the framework of a comprehensive settlement for the whole of Sudan. I think that the South should exercise its right to self-determination within the framework of a comprehensive settlement that includes all the major forces. The history of Sudan tells us that whenever an

agreement has been reached between a single faction and the government, the other excluded forces would work to undermine this settlement. Therefore, I think it is not in the interest of Southern Sudanese to exercise the right to self-determination within the context of an agreement with the present government.

An even worse scenario is a partial agreement between some of the Northern parties and the present regime. This would complicate the situation both in the North and South, and would certainly not lead to circumstances in which Southern Sudanese can exercise their right to self-determination.

Regarding the forum of this comprehensive settlement, I do not think that the Libyan-Egyptian initiative has a chance to succeed. Southerners rightly think that the Arabs have dominated Sudan and excluded them from power since independence. Now, for the first time in our history, an African group has been formed to address Sudanese conflict: the IGADD forum. Instead of strengthening this forum, we go around it and introduce new initiatives spirited by Arab countries, which are not acceptable to the South. But what I do not understand is why the IGADD could not be expanded to include Northern political parties.

Mr Ahmed Ibrahim Diriage

What is good about the Libyan-Egyptian initiative and lacking in IGADD is that the Libyans have influence on the Sudanese government, and that they pressure the government to opt for a comprehensive solution that involves both the Northern opposition and the SPLA/M. The Libyan-Egyptian initiative is really a Libyan initiative endorsed by the Egyptians. The Libyans told us that the real issues they wanted to be discussed are IGADD's, i.e. all that we have agreed on in Asmara. So the ideas and principles of the Libyan-Egyptian initiative are virtually those of the DOP. The Libyans said they would contact the IGADD forum in order to incorporate it in the initiative. Those who suspect the Libyans and Egyptians because they are Arabs should remember that others before did not trust the IGADD countries because they are Africans. We should not be so sensitive. I am against Arab hegemony myself, but I believe that the Libyans and Egyptians favour a neutral atmosphere.

Dr Abdelwahab el-Affendi Osman

There is no doubt that the solution to the conflict in Sudan must be a democratic solution, i.e. power sharing for all. However, the question now is: how do we get there? What are the priorities for resolution?

I agree with Mr Malwal and others that the nature of the North-South conflict is different from other Sudanese conflicts, as it is based on a fundamental and deep division. Unlike the other conflicts, the war in the South has been raging also in the democratic periods of our history and if we were to have democracy today, it would still be going on. The conflict in the South calls for a more fundamental solution.

If you want democracy in Sudan you first have to resolve the North-South conflict in a way that is fundamentally acceptable to the South. Then you can build on this to achieve the democratic system. We are of the opinion, therefore, that the Southern problem must be resolved first. This is why we support the IGADD process in its present form.

The problem here is that Northern opposition parties view this as disadvantageous, because it will reduce their leverage in power-sharing. On the other hand, if you resolve the North-North conflict first, it will be the Southerners who would feel that this reduces their leverage in power-sharing. This is why the SPLA/M has not been favourable of including the NDA in the IGADD talks. In my view, however, all this is short-sightedness, because whatever the view of the respective parties, they should all be committed to a democratic solution. Even if they get what they want, that should not reduce their support for the rights of others. I believe that if the NDA or the Umma Party joined the government, this should not make them less supportive of a just solution for the Southern problem.

Dr Abdelsalam Sidahmed

There is a tendency to downplay the North-North problem in the country. Although this conflict is not as deep as the conflict in the South, it should not be forgotten that the North is deeply divided on fundamental issues about how to rule Sudan, the relationship between religion and politics, and so forth. Even the advocates of Islamic rule, such as the NIF and the Umma Party, disagree about how this should be done. I agree with Dr Seisi, however, that the Libyan initiative is complicating things.

What is absent thus far from the discussion is that Sudan is disappearing as a country. Not only is war the problem, but also the sheer negligence of responsibility of this government towards basic things, such as education and health-care. If we are really serious about finding a solution, we do not only need a political settlement, but a vision for the whole future of Sudan.

Dr Pauline Riak

Dr de Chand, I have a question for you, but I do not want you to answer it. You say that the government has consistently dishonoured its agreements with the South. So when you concluded the KPA, what made you believe that it would honour its agreement this time?

The discussions here focus on political groups, but how representative are these groups of Sudanese people? I want to urge you to include the civil society in your considerations, the people on the ground. We have to mobilise them and formally involve them in the peace negotiations, because, if sufficiently mobilised, they may be the only group left in Sudan whose voice can make a difference.

Peter Woodward

I drew up the following checklist of what seems to have been resolved here.

1. There is a general military deadlock that hurts all parties to the conflict. For negotiations to take place there must be
2. an agenda of issues that sufficiently overlap;
3. a degree of unity within the different parties;
4. and an international environment that provides few options other than continued negotiations.

1. The Military Deadlock Hurts All Sides

Mr Bona Malwal

The military deadlock is really a political deadlock, namely, that those who have been in power in Sudan since forty four years refuse to make concessions. This resulted in the military situation.

2. Agreement on an Agenda of Issues

Mr Bona Malwal

I think there is sufficient overlap in the agenda to negotiate.

Dr David de Chand

The issues are very clear in the IGADD DOP. What is left to agree on now in IGADD are the modalities: how are we going to organise the referendum?

Mr Ahmed Ibrahim Diriage

The issues to be negotiated are agreed on in the DOP. The problem is how to bring all the negotiating parties in one place instead of the parallel processes that are going on now. The Libyan-Egyptian initiative is preferable.

3. *Unity within the Different Parties*

Mr Bona Malwal

There is not enough cohesiveness neither within the North nor within the South. We have to work on our unity as Southerners. Northern unity may soon be brought about by the Libyan-Egyptian initiative.

Mr Ahmed Ibrahim Diriage

There are factions within the NDA too. The traditional parties, Umma and DUP, are in fact close to the NIF, as they have been advocating *shari'a* law themselves. Their difference with the NIF is merely a struggle for power. Other factions in the NDA, however, such as Sudan Federal Alliance, the Beja Congress, the Nuba, the Ingessana, the Alliance Forces of Abd al-Aziz Khaled and others, are firmly behind the IGADD DOP, i.e. we want structural changes on the issues of religion, federalism, etc.

Mr Wani Rondyang

The internal differences within the various parties have increased. The oppressed people cannot agree on an agenda and the NIF is exploiting the internal differences of their opponents to the maximum. In this room we can see that whenever some Southerner refers to self-determination, someone from the West will come to say: this is not a Southern problem but a problem for the whole of Sudan. Despite all that, history gives us elements that we can refer to when we look for solutions. Different groups can be identified, and we should acknowledge that there are Southerners, Westerners, etc. Perhaps simultaneous peace processes, based on these groups, will work to solve the problems of Sudan.

4. The International Environment

Mr Bona Malwal

The real problem is the international community. There is no international position over Sudan, and as long as this is absent you cannot limit the alternatives open to the parties. The American position is at least clear; they consider the present government a terrorist regime, they do not have side discussions with the regime, and they want to exert pressure on the regime. Our real problem, however, is the Europeans, as a group and as individual countries. They seem to know what is good for us better than ourselves; they all have their separate agendas and, as IGADD partners, they block the peace process until these agendas have been met.

Dr David de Chand

The problem is that, because of strategic interests in the Middle East, the international community does not adopt a unified position on Southern Sudan. In fact, it should support self-determination for Southern Sudan, on humanitarian grounds, as it did in the cases of Kosovo and East Timor. Western countries and international institutions, like the IMF, should stop their financial dealings with this government, because the money is used to perpetuate the war.

82 03

SECOND SESSION

CREATING A CONSENSUS

Chair: Dr Peter Woodward

Dr Abdelsalam Sidahmed (statement)

On Consensus-building

To start with: I am independent, I am not representing any organisation. My only concern is consensus as a prerequisite for the future. In a discussion of consensus I think everything should be left open for discussion, nothing should be taken for granted.

Looking at the phenomena of political instability and the civil war as symptoms of division and disagreement, I will first outline the situations where the major Sudanese political forces were not able to reach a consensus, especially at crucial historical moments. I will demonstrate that this happened either because some groups were deliberately or inadvertently excluded from discussions and forums or because of the lack of agreement over the main issues among all the players at a given moment. Then I will move to explore the possibilities of consensus building in the present situation. In particular, I will try to formulate a number of issues which may constitute the 'irreducible minimum' for the main forces to agree upon, and as such form the basis of a consensus.

The symptoms of the absence of consensus in Sudan since independence are civil wars, political instability, and the failure to reach an agreement on a constitution. Political instability was demonstrated by the successive termination of parliamentary systems by military regimes and the failure of the latter to establish a viable political system. Furthermore, Sudan suffered from civil wars in the South of the country from 1955 to 1972, and from 1983 until today.

Throughout history since independence, the absence of consensus has become manifest in the absence of major political forces at crucial historical moments

as well as in the disagreement on issues pertaining to Sudan's governance and its political system.

Firstly, the following list may serve to demonstrate that at many crucial historical moments in the history of Sudan since independence, one or more of the major forces have been absent:

- Already before independence, the South had been absent from the Self-Rule Agreement of 1953, which paved the way to independence.
- In the democratic period between 1964 and 1969, the South was absent from the political arrangements that followed the October 1964 uprising. Partial elections were held in which the South did not participate and in 1968/9 both the left and the South were absent from the agreement over an Islamic constitution.
- During Nimeiri's rule, the Northern parties were absent from the Addis Ababa Agreement of 1972. After Nimeiri, the Southern forces were absent once again from the political arrangements which followed the April uprising of 1985. Again, partial elections were held in which the South did not participate. The same happened in the ensuing peace process between 1985 and 1989: the DUP and NIF were absent in Koka Dam in 1986; the Umma and the NIF were absent from the Sudanese Peace Initiative of 1988; and the NIF was absent from the United National Government's Presidential Palace Programme of March 1989.

Secondly, the absence of consensus has manifested itself in disagreement on issues pertaining to Sudan's governance and its political system. In fact, there are several issues, but emphasis would be laid here on lack of agreement on constitutional arrangements. Failure of agreement on a permanent constitution has been one of the conspicuous manifestations of political instability in Sudan. Among the main controversies which characterise the discussions on a constitution are questions pertaining to the form and identity of the state, in particular the questions whether the state should be federal or unitary, Islamic or secular and presidential or parliamentary. The problem underlying these controversies has been the failure of the independent state to provide answers to a number of fundamental questions. The most important of these questions are those pertaining to regional disparities, particularly the disparity between the North and the South, the discontent of various 'marginalised groups'

regarding the distribution of wealth and power, the religious or secular identity of the state, and the question of *shari'a* application.

On the basis of the above analysis, what are the avenues open to us towards the building of a consensus in Sudan?

One essential question in examining the issue of consensus-building is whether emphasis should be laid on the main political forces, or on the issues that constitute the substance of the controversies. In other words, should a consensus be constructed on an agreement between forces or on issues? No agreement on issues would be operative without involvement of the main political forces of the country. On the other hand, an agreement between the main forces without a consensus on the fundamental issues would solve nothing. Issues and forces, one may argue, are necessarily interrelated and may be treated as two faces of the same coin. However, I think that for analytical and conceptual purposes more emphasis should be put on issues.

What should, in the case of Sudan, be the 'irreducible minimum' around which consensus can be built? In view of the complexities of Sudanese situation and the lack of a strong tradition of a nationhood, it may be difficult to try to build a consensus around concepts such as 'national interest' and 'territorial integrity'. In our situation, I think it may be more useful to try to build a consensus around certain essentials such as:

1. Collective Responsibility towards Sudan

All forces involved in the process of consensus-building should realise that they share a collective responsibility towards Sudan. Such an attitude is an essential prerequisite for reaching an agreement in the first place. It is also important if the country is to continue as an entity.

2. Rights and Entitlements

Sudan is party to most international human standards. It is a signatory to the Universal Declaration of Human Rights, International Covenant of Civil and Political Rights, International Covenant of Economic, Social and Cultural Rights, and Convention Against Torture. These commitments, in addition to others to be solicited in the future, could provide a good framework for a system of rights and entitlements to Sudanese citizens, both as individuals and as groups. It should be stressed in this context that

there should be an explicit agreement that citizenship constitutes the basis of all rights and entitlements.

3. Accountability

Accountability can work only within a democratic framework. It has two prerequisites, one institutional and one operative. Firstly, it requires the establishment of democratic institutions on the basis of separation of powers, the rule of law, and a free press. Secondly, accountability should be actually put applied in the various institutions of the state and through regular elections.

A consensus among the main Sudanese forces on these matters would establish a system in which people can agree to differ, co-exist, and contend for power peacefully. Someone may now ask: if we are not sure that Sudan will remain united, then why should we speak about consensus? My answer is that even if Sudan is split up into two countries, each one will need a consensus for a political system, and I think the above mentioned principles will be valid for both.

Dr Sumayya Abukashawwa (discussant)

Firstly, I would like to redefine Dr Sidahmed's major political forces to include civil society, the majority of the people, who are not directly involved in the negotiations nor in creating problems. Today, we are lacking one important faction: the Southerners inside Sudan who do not belong to the government nor to the SPLA/M. They are quite numerous. Other important groups who are not represented here are women and youth.

As for the issues Dr Sidahmed discussed, I generally want to say that the people of Sudan have a right to some constitutional vision. We cannot tell them to wait until we solve our political problems. No matter whether the end-result is unity or separation, we need an exercise of future-options of how Sudan should be governed. Also the forefathers of the American Constitution were not elected. The people later democratically endorsed the good constitutional articles they devised. It is in this light that I would like to discuss some of the issues raised by Dr Sidahmed. Federalism is already practised in Sudan. This practice may not be perfect or ideal but the process has started with states, people practising elections, and so forth. There may be some mistakes, but the fact remains that nowadays people use democracy to resolve their conflicts and share their power and wealth. A start has also been made

with a system of checks and balances. Again, this may not be ideal, but I think that we should build on what we have. Further, we should build on the general human heritage and take from whatever system we think is suitable for us.

Many have emphasised today the diverse nature of Sudanese society, but I think we should not forget that there is also particularity. When we speak about the federal system, there are certain points relating to the central government and to the states, namely, the distribution of power and wealth, the preservation of the heritage, the organisation of a system to preserve cultural identity. For me this is the only way to have diversity and at the same time cater for specific groups, because you cannot build a nation on just cultural differences. The world is becoming one village and there are so many influences, so much is going in and out of countries, and there is no state today that can claim to be totally homogenous. States are heterogeneous, although we can find some states that can stand as examples for consensus.

As for rights and entitlements I agree that these should be based on citizenship. But we should not only look at the rights of individuals but also at the rights of groups, such as women, children, etc. It is not only citizenship for individuals.

I will give you an example of our efforts to change the Constitution in this respect. We had to change the Citizenship Law of 1947, because that law stipulates that a Sudanese citizen is anyone born to a Sudanese father. It was really a heated debate, because many people did not see what was wrong with it. Women had been excluded by that law. We had to stipulate in the constitution that a Sudanese citizen is anyone born to a Sudanese mother or father. Also, we had to cater for women in the democratic political system. We argued that at least 25% of the seats should be given to women by election. This evoked three opinions in parliament: one group said that women can compete to have their share without a fixed percentage allotted to them; another group said that it was not important to include women at all; and a third group supported our idea. Dr Sidahmed's paper missed an important point which is pluralism in the political system.

As for religion, I think that in Sudan religion has never been the source of conflict. If we will now start to discuss the option of religion, I do not think we are going to reach a consensus or a solution. When we keep religion out of the system, this will not stop the conflict. One religion did not stop the conflict either, nor one language. When it comes to religion, there are some historical distortions. People think of Islam specifically as an obstacle for arriving at consensus. But if we look at the war and its history we see that when it erupted

religion had nothing to do with it: there was British rule and there was no religious establishment, no Arabisation and no Islamisation. Also when it re-erupted in 1983, religion was not the issue. So we should not over-dramatise the point of religion. The juxtaposition of Islam and race will not really solve the problem. In the North, there are Muslims and Christians and in the South there are Muslims, Christians and other creeds. These are questions we have to cater for.

As for us, we are trying to bring together women from all groups, North, South, Christians, Muslims, etc., and look together at issues that concern women in particular; in other words, we are trying to create a unified forum in terms of issues. As women, we are trying to participate in this whole process, whether it brings us to unity or to a separate South.

Dr el-Tigani Seisi (discussant)

The statement presented by Dr Sidahmed questions the concept of consensus-building in Sudanese context, which has been characterised by volatility, political instability and civil wars. The implicit assumption in this respect is that the Sudanese problem cannot be resolved without consensus.

Though I agree in principle with the argument that it is important to build consensus around the three essentials, namely, collective responsibility, rights, and accountability; I think that such essentials need to be thoroughly defined and elaborated, as different parties to the conflict have different interpretations and definitions of the same concepts.

Concerning collective responsibility and rights, I think that consensus and collective responsibility can only be attained if all parties to the conflict recognise the rights of others in power-sharing as well as wealth-sharing. It is this recognition that represents the driving force behind any attempt towards building consensus and collective responsibility.

As we all know, or, at least as some of us do, the current events in the country are not encouraging at all. We have an autocratic government in Sudan that came to power through a military coup overthrowing a democratically elected government in June 1989. Since then all the rights of that majority of Sudanese people have been confiscated.

Though Sudan is multi-cultural, multi-religious, multi-ethnic and extremely diverse, its records, since independence, in recognising this diversity and the rights of the others have been very poor indeed.

As a matter of fact, the problems of the country have been aggravated since independence because of the monopolistic attitudes of most governments with respect to rights, while large sections of Sudanese community have been denied these 'rights'. Consequently, some groups have become the ruling elite of the country while others have been excluded. Furthermore, some parts of the country have become developed with access to substantial services and development projects while other parts have become marginalised, repelling and had only limited or no access to services and development projects. The grievances throughout the deprived areas have triggered civil wars and almost had the course of the country positioned straight down the drain.

In such an environment, collective responsibility towards Sudan can only be attained if rights are recognised and rights can only be recognised if they are based on citizenship, and outlined in a bill of rights', a 'Sudan charter of rights', or a 'declaration of rights', recognised and ratified by a constitutional conference attended by all the parties concerned.

As for accountability, I think that in a government without consensus there is neither responsibility nor accountability. In a situation where the absolute ruler or regime can do no wrong, accountability is out of question. In such a situation, chaos as well as corruption become dominant features emanating from the top of the government structure and descending downwards to the lower levels of the government. I believe in such a situation it is fair to say: 'when there is a government that can do no wrong, it implies that it does nothing'.

Accordingly, I see no logic in separating accountability or 'responsibility' from a democratic constitutional rule or 'government by law' which places limits on the scope of the government, spells out individual rights and creates opportunities for redress should the government exceed its authority.

Should the state be presidential or parliamentary? Since independence, Sudan used to have a pattern of democratic governments in which there is an elected parliament, with executive powers vested in an elected prime minister and a ceremonial head of state represented by an appointed council of state. Under such arrangements, the country has experienced a number of problems, including power struggles among the central institutions as a direct result of

the dualism in authorities and responsibilities. I believe that to avoid the recurrence of these problems, it is time for the forthcoming democracy to revert to a presidential system within a federal Sudan.

Should the state be federal or unitary? I do not think the terms 'federal' and 'unitary' are contradictory or mutually exclusive. We can have a unitary state and at the same time federal. The issue here is whether Sudan should have a true democratic and decentralised system of government, in which powers are shared between the centre and the regions, or should powers be centralised in the capital?

Perhaps one of the most important factors that contributed to escalating and complicating the problems of Sudan is the centralisation of power in the capital city of Khartoum. This has started shortly before independence when Southern Sudanese were promised to be granted federation. But they were tricked and they ended up, on the dawn of independence, with a highly centralised 'local government system' instead. In 1972, came a partial breakthrough when the Southern region was granted autonomy under the 1972 Regional Self-Rule Act. However, it was not so long before the 1972 Addis Ababa Agreement was violated by the May regime and the agreed system of decentralisation for the South was infringed. The May regime issued the 1980 Regional Government Act, according to which Northern Sudan was divided into six regions and some central powers were transferred to these regions.

Although the regional government system was born weak, and there were repetitive interventions from the centre in the affairs of the regions, the regional system of government became the benchmark for decentralisation below which the people of the peripheries will not accept any alternative arrangements.

The present regime has introduced the federal system in Sudan and it has now, too, become the benchmark. Though it reflects the aspirations of the vast majority of Sudanese people, the way in which federalism was introduced by the regime had a number of drawbacks.

Firstly, the arrangements have been federal in name and structure but not many powers have been transferred to the newly created states, i.e. the structures lacked substance. Secondly, the system has been born weak because it has been devised by a presidential decree. Finally, it has been applied in some areas of the country to appease tribal leaders or prominent members of the

ruling party, and, therefore, it created further divisions rather than building consensus at the regional levels.

What the country needs in this respect is a government system in which there is a genuine separation of powers both between the federal government and the states and between the institutions of the federal government. Of utmost importance is the fact that federal arrangements have to be ratified by a constitution that outlines the division of power between the states and the central government as we have mentioned earlier. The platform for doing this, should be the constitutional conference.

Should consensus be constructed on an agreement among forces or on issues? To me the answer is on 'both'. The present situation does not give much room for manoeuvring, and, therefore, consensus can only be constructed on both an agreement among the forces and on the issues.

Mr Bona Malwal

I have a basic disagreement with Dr Sidahmed on the issue of consensus, because I think that Sudanese situation has moved long time ago beyond building consensus. After everything that has happened to Sudanese people I think it is really a waste of time and resources to discuss the possibility of a consensus that would bring North and South together in agreement. I have been an advocate of unity myself for a long time, but now I no longer believe this is possible. I think unity is a noble thing, but the behaviour of those in power in Sudan, since independence, has made unity impossible. This regime, for instance, has treated the Southern Sudanese as if they were non-humans who need to be perfected. The government knows that there is slavery in Sudan but rather than deal with it, it tries to explain it away. I myself go into Southern Sudan frequently; I meet people who return from the North with their limbs cut off. When you see this, can you be true to yourself and say that there is still a basis for unity and consensus in a nation of that kind? The answer is no, as far as I am concerned.

My thesis is that we have moved beyond keeping Sudan together and that building consensus is no longer something that we should be talking about. If there is something to be built, it is the future of relations between people of Northern and Southern Sudan. Because even as two countries, the North and South will still have a lot of relationships; and given our history, it will be quite a task to maintain good relations as neighbours.

Dr Abukashawwa tells us that there are Southerners inside the country whose point of view is not represented. Of course in the Khartoum of Turabi and Bashir, no Southerner will say out loud that he wants a separate South. But I can assure you that when we can guarantee them a free vote, they will all vote for a separate South.

Dr David de Chand

I could not agree more with Mr Malwal that since 1956, the pillar for building a bridge to consensus in Sudan has been missed. The North has consistently monopolised power and excluded the South. The available economic resources have been consistently monopolised by the ruling elites in Khartoum, at the expense of those in the periphery. Development projects in the South, such as the Magalla sugar-factory, the Wau fruit-canning factory and several factories in Malakal, have been eliminated or transferred to the North. Even this oil we are prospecting now, its money will be used to fuel the war and what is left after that will be used to enrich Khartoum while the South and other marginalised areas will only get poorer.

In addition, there has been a consistent denial of Southerners' access into the political system. There has never been a Southern minister or under-secretary in one of the key departments, such as defence, finance, economy or interior. Certain ministries have always been designated for Southerners, such as that of wildlife and animal resources. In education, Southerners have been denied access to universities and foreign scholarships.

There is a lack of confidence and trust. We have lost our trust but also the Northerners do not trust any Southerner. When you are a Southern ambassador, for instance, you are continuously surrounded by security people. Consensus is built on trust. So if there is no trust, how can we build consensus?

Take the issues of Islam and Arabs versus Africans. Everything Arab is considered superior. This kind of attitude makes consensus impossible. And why force Islam on me? The schools and churches of Southerners who have come to settle in Khartoum are bulldozed by this government. How do you expect them to become part of the country?

And let us not forget the consistent practice of abduction, kidnapping and slavery which has been promoted by all the political parties including the democratic ones and the previous military junta. Today it is still going on.

How can we tolerate that humiliation. In the end of the 20th century, Southern Sudanese are the only people who are still being enslaved. How can we build a consensus on such systematic abuse of basic human rights?

The time for consensus in Sudan is over. We have to think now of ways in which we can co-exist as good neighbours. We want the partition of the country. Unity in equality may have been possible in the past, but now that opportunity has been lost.

Dr Amin Mekki Medani

The question of consensus is really a question of delivery, of finding the political will to actually implement what is agreed upon. Since independence, we have had various constitutions in Sudan. But both democratic and military governments have done things that contravened these constitutions: the dissolution of the Communist party in 1965, the dissolution of the Constituent Assembly, the abrogation of the Addis Ababa Agreement, which had been enshrined in the Constitution, the amendment of the Constitution by Nimeiri in 1975. So it is really a matter of finding political will rather than provisions in the constitution.

In spite of this, and although I respect the feelings of Mr Malwal and Dr de Chand, it seems to me that we should not lump the Northern political parties together with the NIF and blame them for the acts of the NIF during the past decade. On the contrary, I have reason to believe that the experience of the past decade of NIF rule has built the conviction among the Northern political forces that we have to address national issues more seriously than we did before. That even if the South becomes a separate state, a continuation of the same political behaviour will not solve our problems. It is not long ago that self-determination was out of the question for NDA leaders. But they changed their view and accepted self-determination. The government initially accused them of having sold out for separation. But now the government itself came back to self-determination. I do not think that either Mr Malwal or Dr de Chand will look negatively upon the Asmara Declaration, the idea of making a united front and fighting together. So while I respect your feelings, I just wonder whether this is the right time to say all that.

As for Dr Sidahmed, I really do not understand your point of national interest, territorial integrity and sovereignty, because all our past constitutions, in fact, referred to territorial integrity and sovereignty. With regard to rights, you say that Sudan has ratified the two covenants and signed the one on torture. But

you forget to mention that it has not signed nor ratified the ones on the political rights of women, prevention of discrimination against women, the slavery convention and the genocide convention. And these are essential elements if you want to talk about entitlements and rights. When you discuss accountability, I wonder what kind of accountability you have in mind, and especially whether it includes impunity. As far as politics is concerned, we have to think of it in terms of impunity.

Dr Abukashawwa, your words about consensus made me wonder whether there is anything in the English language, which is called 'unilateral consensus'. What you talked about were all things that this regime has unilaterally done to suit its programme and philosophy. You mention women citizenship, but if you want to discuss the position of women seriously, you have to discuss the Law of Personal Status that was passed; the position of women as far as polygamy, divorce, *kafala* (bail, custody in Islamic Law) and adoption are concerned; and the Law of Evidence which stipulates the value of the testimony of women; as well as the Public Order Laws about riding in public transport, travelling alone and Islamic dress. What has happened to women in Sudan?

You, implicitly, referred to *hay'at al-mazalim*, the organisation for injustices and *diwan al-'adala*, the organisation of justice. In fact, these organisations are the most obvious underminings of the judiciary that you can think of, because both these organisations practically belong to the president. He appoints and decides their mandates and terms of reference. And these organisations have the power to entertain claims from the highest judicial authority, i.e. the rulings coming from the Chief Justice or the High Constitutional Court. These rulings can be reversed by *hay'at al-mazalim* and *diwan al-'adala*.

As for the federalism that is being implemented in Sudan, that is only federalism in name, not in content. In content, it is quite the opposite of what is intended with the idea of federalism. It is kind of slaughtering the country, dividing it into 26 states, with a 100 or so ministers and about 500 governors and with 10 instead of 3 states in the South. And who are the governors, ministers and deputy ministers of these 26 states? All cadres of the NIF! So much for consensus.

As for presidentialism, Dr Seisi may have put something of worth on the table. But before we move to presidentialism, we have to resolve several other issues, such as the issue of self-determination in our relation with the South and the question of federalism itself. Because look at the state of federalism

now and the powers of the president: he is leader of the army, appoints ministers, judges and governors. Such presidentialism is not compatible with either federalism or the separation of executive, legislative and judicial powers.

As far as religion is concerned, Dr Abukashawwa, we are not discussing the freedom of worship here. What we are talking about is religion used as a criteria for discrimination, and that is basically what this Constitution does. The 1998 Constitution is really the epitome of discrimination on the basis of religion.

Mr Bona Malwal

I really did not want to blame the Northern political forces for what the NIF is doing. The things the Northern political forces have inflicted on the South in the past may not be as serious as what the NIF is doing now, but what I wanted to say is that it is a cumulative thing, just like a disease. If you do not take the patient to the hospital, eventually he dies.

Dr Mansour Yousif el-Ajab

Dr Abukashawwa, you talk about the Constitution, about citizenship and federalism, but I do not care about texts, what matters to me is the practice. Today, people are detained and tortured for no reason, and this continues whatever constitution you have. The question is: what practical provisions have been met for civil society, freedom of expression and mobility and so on? Time has come for you to say: we had good intentions but we have failed. That is an admirable and courageous thing to say. We also admit that the parties who have ruled Sudan in the past have not addressed the problems of Sudan. They have realised this now and there is a great change in the mentality of the traditional parties.

Federalism is not just about the delineation of physical space, it is about the relationship between people. What is happening now in my own constituency, is that you have delineated its physical space into smaller areas with the underlying aim of strengthening the security grip of the government.

A presidential form of government is very dangerous. Once a president is elected, you cannot get rid of him before his term is over. I think the best system for Sudan is a parliamentary system based on accountability. However, to make the principle of accountability work, we will have to democratise our

traditional parties. All our traditional parties, including the latest one, the NIF, are controlled, financially and otherwise, by their sheikhs. We cannot have members of parliament who rely financially on the patrons of the traditional parties.

I am behind the Asmara Declaration in which we all recognised that we need a new Sudan. John Garang is a member of the Asmara Declaration Conference; and, as far as I know, he still believes in this ideal of a new Sudan. Let us keep our country together.

Mr Ahmed Ibrahim Diriage

Dr Abukashawwa said that religion did not play a role in Sudanese politics. Let me remind you that the controversy over *shari'a* was one reason why governments, since independence, have failed to make a constitution. As soon as we had achieved independence, the issue of religion prevented us from agreeing on a constitution. The two main Northern parties argued that the constitution should stipulate that all laws in the country must be derived from the *shari'a*. This caused the Southern representatives to withdraw from the parliament. When the military regime of Abboud came to power in 1958, they started a policy of Arabisation and Islamisation in the South. When democracy was restored in 1964, the issue of *shari'a* immediately resurfaced, and again it made us fail to agree on a constitution. During Nimeiri's military regime a constitution was adopted that guaranteed religious freedom, but Nimeiri changed his mind and in 1983 he introduced *shari'a* law. All the subsequent governments, after Nimeiri, had unable to do anything about it; and then this government came to power in 1989 and declared Sudan an Islamic state. So to say that Islam has never been an obstacle in reaching consensus in Sudan is simply not true.

Now to come back to the issue of consensus-building. According to the DOP, even though it states that self-determination should be applied, unity is preferable. With the agreement of the government, the SPLA/M and the Northern opposition on the DOP we have a consensus on how to solve the problem of Sudan. What is needed now is a forum where they can meet and reach another consensus on how to live together. Now only the SSIM/A wants an independent Sudan anyway.

Dr David de Chand

We accepted the DOP. In fact, we devised it. But we are committed to an independent Southern Sudan.

Mr Ahmed Ibrahim Diriage

So now you are again with us in the ideology?

Dr David de Chand

We have been part and parcel of it all the time.

Mr Ahmed Ibrahim Diriage

Good! So now we have only our brother Mr Malwal. The SPLA/M accepts it, the SSIM/A accepts it. Mr Malwal, you are the only one not in agreement with the IGADD DOP, because if you are really calling for independence now, why come and discuss the separation of religion and politics as stated in the DOP?

Mr Bona Malwal

I am not asking for those discussions. I think it is a waste of time.

Mr Ahmed Ibrahim Diriage

So now we have a consensus on the principles of solving Sudanese problem, the DOP, which is agreed on by all, including the two factions in the South, SPLA/M and SSIM/A, except brother Mr Malwal and somebody else. So go and have consensus in the South about whether you want separation, or you find the IGADD DOP acceptable and have a united Sudan.

Dr el-Tigani Seisi

In this discussion two levels of consensus are talked about: one between the North and South and one for the whole of Sudan. Mr Bona Malwal, if the South wants to achieve its ultimate objective, whether it is self-determination or complete separation, this can only be done on the basis of consensus between the South and the whole North. It is the responsibility of both the North and South to reach a consensus on a just solution for the whole of Sudan. It is not too late for that. We are talking now of power- and wealth-

sharing, constitutional arrangements, and secession; all these things can only be achieved through consensus-building among all parties to the conflict. For me, secession is now a fact of life; to have two separate states is a matter of time. But I do not think this can happen without consensus between the North and South, among all parties involved.

Dr Pauline Riak

I would like to remind us Africans that at one stage in our history we were walking on the Northern shores of Egypt. Since that time, we have been moving Southward, voluntarily or forced by a group of people who do not consider themselves Africans. Before the fall of apartheid, we had the Boers moving Northward. And as I looked at the situation I wondered what was happening to the Africans being squashed from both ends of the continent. Personally, I would not like to give up one inch of my country, which is Sudan, especially not to people who are not Africans. That is just a statement.

I want to ask you to close your eyes for a moment and reflect on the ravages of Sudan. We are talking about 2.9 million relatives who are dead because of the war since independence, about 4 million or so internally displaced Sudanese citizens and 2 million or more of us living in exile. Out of every 10 people who died in Sudanese conflict, 9 were unarmed civilians, mostly women and children. So I do not know what our problem is, but if these statistics mean nothing to the individuals who order more massacre, genocide, slavery and what have you, then surely we have a problem as a people!

Dr Sumayya Abukashawwa

Regarding Dr Medani's remark about Personal Law, I want to say that there had been no law for Muslims so we drafted the Family Act in 1992. It caters for polygamy, child-care, etc., for Muslims. It may have some problems; but since it is for Muslims, I do not see the problem. This law was made to suit the people and the people are free to change them. As for the Evidence Law, it may be changed as well. As for federalism, if you want a federal system, then you must have several states. So that is why there are 26 states. They were not imposed, the people wanted them; they were consulted. The federal system we have now may not be ideal, but you have to start somewhere. At least it is one step towards democratisation.

I have never heard of 'unilateral consensus' and I wonder how that could be made. The status quo is that there are 26 peoples living in Sudan. They have to

apply a system somehow, in which they can look for consensus. That is the best thing they can do right now. Until we have all agreed, which I hope will not take very long, this is the only option available for us; for you cannot be frozen until things have improved one day.

Dr de Chand, no one is imposing Islam on anyone. Religion is a personal conviction, no one can impose it on anyone. You say that it is too late for consensus, but it is not; you can always have dialogue. Unfortunately, there is distrust, but it should not be generalised for the whole people living inside Sudan. You may say: I do not trust this or that group, but you cannot lump all Northerners or Southerners together and say: I do not trust all of them. As for the lack of implementation of the KPA, the people who signed the agreement with the government did not do their share as well; the co-ordinative council is still in Khartoum and not in Juba.

Mr Wani Ronyang

Dr Abukashawwa's talk is an example of the level of sophistication the NIF has developed in denying and concealing things that are going on. She simply denies all the things the regime is criticised for. It is a fact, however, that by means of your power position, you are able to create conditions in which people are being imprisoned, abducted, enslaved flogged etc. You cannot deny that these things are happening and the conditions that allow them to happen are created by the regime.

As for consensus, we have to define what exactly we need consensus for. In the situation we are facing today, with slavery going on and a history of dishonoured agreements, a consensus can only be a transitional consensus. I would qualify the Asmara Declaration as a consensus made with transition in mind; it is something that can lead us to another step.

Mr Bona Malwal

Indeed, we need a definition of what we mean by consensus. In one way I agree with Dr Seisi when he says that the South cannot have its independence without agreement from the North. Because at the end of the day, when Northern Sudan does not recognise an independent Southern Sudan, then either the war will continue or the North will defeat the South. These are the facts we are facing now. But the consensus you are talking about is a veto of the North over the South, and that is unacceptable. Because if what the South wants is not accepted by the North, then the war continues and that is exactly why we

have had this war for the past four decades. What the South wants is its freedom. It will take it whenever it is able to do so and it will lose it when it does not have that capacity. There is no consensus. The way federation and self-determination have come to be accepted in the North is through the struggle of the South. So if the North does not want to give us our freedom, we'll go all the way inasmuch as the South has the capacity to fight for it. We do not need to build a consensus on this. If we agree on a consensus now, and the North does not accept our independence, we can no longer take to arms because we have agreed on a consensus.

Dr Abdelsalam Sidahmed

Some people here seem to switch off when they hear the word consensus, assuming it to mean consensus between the North and the South. But I never said that. Right from the beginning of my statement, I have said that nothing should be taken for granted. And I concluded my statement by saying that even when we opt for two states, we still need a consensus for that.

I would like to modify the two levels of consensus Dr Seisi talked about. In the first place, we need a consensus on the settlement, on the procedures that allow the principle of self-determination to be implemented without further bloodshed. That is the first level and a lot of work has been done on that level already. Now I want to move one step further, that is: whether we are in the North or the South, we have to agree on certain principles useful to both of us. If we can agree on human rights, accountability and collective responsibility to our country, be it in the North or in the South, we will succeed. If the option will be to have two countries, these principles will still be needed. In a united country, these principles will definitely provide a political system, which is more accommodative for the grievances and concerns of the various individuals and groups in the country than what has been achieved so far. Let us agree on the two levels: first the procedures for transitional arrangements that would allow for the implementation of self-determination, second, a set of constitutional principles useful to both of us.

Let me respond to some of the comments made about my statement. Dr Medani, I stated that the principles of sovereignty, collective responsibility and territorial integrity are unfortunately not applicable in our case, for the simple reason that many people are questioning the territorial integrity of Sudan. Before we move to these issues, we have to agree on them first and that is why I think that first we have to opt for the issues of rights, accountability, and collective responsibility. Further, I am aware that Sudan is not a party to some

of the important human rights conventions that came into being after the year 1989. In connection to this, I am fully supportive of accountability for human rights violations, particularly those committed during the past decade both by the government and the opposition. But that depends, perhaps some would like to go back further. I doubt whether we will be successful in building a meaningful future without accountability for human rights violations.

Dr Peter Idenburg

I would like to make a small comment on consensus. As IDF we deal with many situations where people have to live together even though they do not like that very much. We have a project now in the Middle East, which includes the relations between Christians and Muslims in Lebanon, the secular regime and the Islamists in Turkey, and Islamist regimes with secularist opposition in other places. In such situations, the concept of consensus may not be very useful, because it is often associated with the idea of a common identity, which is exactly what people do not want in these situations. It may therefore be more practical in such situations to use the concept of 'rules of conduct'. This concept starts from the awareness that it is possible to live together even though you are very different, to agree to be different, to 'agree to disagree'. At that point you can say: All right, we are different and we have to live together, for a long time or for a transitional period. So let us agree on a set of rules of conduct that allow each of us to be ourselves and live together at the same time. I bring this to your attention because the different options are presented here in a way that makes them look so mutually exclusive. I think the grey area between them deserves to be explored more.

THIRD SESSION

THEMES FOR THE CONFERENCE ON CONSTITUTIONAL PERSPECTIVES ON SUDAN

Chairs: Dr Pauline Riak and Dr Sumayya Abukashawwa

Peter Idenburg introduces the day's chairs: Dr Pauline Riak and Dr Sumayya Abukashawwa. He emphasises the importance of the involvement of women in peace processes like these.

Dr Khalafalla el-Rasheed (statement)

Internal Discussions in the National Commission for the Constitution

In this statement I am going to highlight certain problems raised during the meeting of the National Commission for the Constitution, which I happened to chair.

The Commission was divided into two committees: a General Committee, as a plenary body, and a Technical Committee, the task of which was to prepare studies and researches for the discussion in the plenary.

The work of the Technical Committee drew a lot of discussion in the General Committee, to the extent that some militants thought that the Technical Committee was attempting to import Western constitutional concepts that may be repugnant to Islam. After a lot of debate on that issue, the general consensus was to proceed with the meeting in order to discuss the studies and reports of the Technical Committee.

The General Committee was assured that the researches and studies of the Technical Committee were intended to guide the discussion rather than influence any course of action.

It was agreed that:

1. The studies and reports of the Technical Committee did not bind the General Committee;
2. The approach to the formulation of the constitution, should be pragmatic;
3. The General Committee was not wedded to any ideological theory of the constitution, though the basic Islamic principles were not to be touched;
4. The Committee was not required to formulate an Islamic constitution;
5. The fact was to be realised that Sudan is a multi-racial, multi-cultural and multi-religious society;
6. The constitution should satisfy all the divergent views and aspirations of a pluralistic society that has to live and work in one place.

The main aim of the National Commission was to forge a generally acceptable instrument that would by and large satisfy the aspirations and hopes of the people of Sudan.

The determining factors of the constitution were predicated on three principles:

1. The ideal and function of the State;
2. Citizenship and basic rights and duties;
3. Power-sharing and wealth-sharing.

Some members were not happy with the way the discussion was conducted; they called for an Islamic constitution since the majority of Sudan happened to be Muslims. It was attempted to convince the opposition that an Islamic constitution would guarantee the rights and freedom of minorities. But the argument was not accepted by the opponents. No specific definition of the Islamic constitution was given, and the position was as murky as it looked. Since the National Committee worked by consensus, the general outcome was that, while freedom of religious creeds was guaranteed, it was possible to agree that the sources of legislation were to be Islamic law and custom. Custom was not defined, though the general principle of law is that custom should not be repugnant to the law and morality.

The propagators of an Islamic constitution did not distinguish between 'an' Islamic constitution and 'the' Islamic constitution. The pertinent question raised is whether there is what is called 'the' Islamic constitution as distinct from an Islamic one.

Professor Qadri admonished those who call for an Islamic constitution saying:

This question is frequently raised not only by a group of ignoramuses, but also by a number of educated people. This is in fact an unpardonable mockery of the constitution principles, and reflects adversely on the bona fides of the person, who has the cheek to raise such an impertinent, irrelevant and even nonsensical question.

He argues that Islam is a way of life with its distinguished philosophy and the constitution is but an aspect of the human activity. Therefore, while there could be 'an' Islamic constitution, there is definitely not what is called 'the' Islamic constitution.

If there were 'the' Islamic constitution, then there could not be any ground for difference. Neither the *Quran* nor the *Sunna* professed an identifiable constitution, but there are definitely basics of constitutional theory in the *Quran*.

Islam gives broad principles and guidance to human beings, leaving intricacies to be worked out as and when the exigencies of life demand. The Islamic or rather Quranic principles are based broadly on:

- (a) rendering back of trust to its owners;
- (b) and justice.

God commands you to render back trust to those who deserve and when you judge or rule the people, you should judge or rule with justice (58: 4). Rendering back trust relates to the government machinery, that every citizen must have a say in electing criticising the rulers or even protesting and what not. Justice must be taken in its broadest sense, for example, equal treatment, equal opportunities, and rendering justice in courts, etc. It is to be recalled that throughout the history of Islam there had been no experience of a written constitution, save the Mithaq al-Madina. Mithaq al-Madina, however, was the product of a precarious situation that demanded a solution for the restive situation of different ethnic and religious groups. After the complete triumph

of Islam, the Mithaq was derelict and forgotten and we are left with no written constitution, similar to the situation obtaining in England now.

But there is nothing to preclude a Muslim society from promulgating a constitution or any basic document to govern its system of administration. Muslims are free to adopt and adapt whatever principles resulting from the human heritage, anywhere, should that action serve their needs and aspirations.

Professor Qadri opined:

And the constitutional structure of an Islamic State in the present world must take into account the contemporary exigencies and the changing imperatives of current realities while faithfully observing the constitutional principles preserved in the Quran and the Sunna.

Professor Mitwalli thought that Islamic principles were flexible and broad enough to give birth to several constitutions in different places.

From the above, it can be deduced that an Islamic constitution does not differ in any fundamental way from the known constitutions of the modern world. While there are similarities between the British constitution and the Islamic constitution, the one glaring difference may relate to the concept of the supremacy of parliament. In Islam, parliament is circumscribed by the principles contained in the basic document and so is the case with the American and European parliaments. However, some scholars accuse those who speak of adopting and adapting these models, of trying to westernise the Islamic society. Such west-phobia, weighed heavily with the pros and cons, could in the end alleviate those misgivings.

One of the difficult issues was the question of sovereignty, whether it should be vested in God or in the people. But God almighty did not choose to rule by himself in this world. Sovereignty is left to humans in order to test their faith, and examine their ability to measure up to the commands of God while exercising their sovereignty on this planet.

Some scholars tried to define the cardinal postulates of an Islamic constitution. As far as the model of the government is concerned, it seemed that there was consensus that:

1. The government should be a sacred trust exercised by man for the benefit of man;

2. The government should be chosen and representative;
3. The fundamental rights of both Muslims and non-Muslims should be guaranteed by the state;
4. The judiciary should be independent;
5. The government should be answerable to the people.

Some 'west-phobes' raised certain objections to the concept of democracy. They argued that democracy, as a western concept is objectionable since it gives people supremacy over God's command whereas *shura* does not meanwhile offering a real opportunity to participate in governmental and social affairs. Such arguments do not probe into the real meaning of democracy. They rely, more often than not, on certain definitions of the term democracy. Democracy is not such a term of art that does not permit different meanings. When they look at the definition given by Abraham Lincoln that democracy is the government of the people by the people for the people; to them that is objectionable. It is submitted that the concept of *shura* is wider than that of democracy. *Shura* can take the form of democracy, i.e. an elected government by universal franchise or by an electoral college.

There was also some misconception of the rule of law. While some members thought that what was known as the rule of law had been imported from the west, it was shown that the concept was embedded in the *Quran*. The rule of law simply means that human actions are not to be left wild and uncontrolled. There should be a yardstick to measure such actions. If this understanding is correct, the verse of the *Quran* that commands Muslims to refer to their dispute to God and his apostle caters for that.

I am sorry for the inordinate length of this statement, but I thought it would be better to draw attention to some problems that may crop up in the future. However the exercise of the constitutional commission was not futile, there was a broad consensus on:

1. Fundamental freedoms and rights;
2. Power-sharing and wealth-sharing;
3. Freedom of association, including political associations, for example, political parties;

4. Independent judiciary.

I think if the politicians are genuine, a constitutional conference based on these wide principles has the chance of success.

Dr Amin Mekki Medani (statement)

The 1998 Constitution

I agree with Dr Kok that a constitution must be the expression of a national consensus on the fundamentals of governance. Further, I think, it should include the rule of law, preservation of human rights, separation of powers, and independence of the judiciary. Sudan has, since its independence in 1956, failed to achieve such a constitution based on consensus.

The present NIF regime came to power in 1989 through a military coup. After ten years of violations of all democratic and human rights principles, and after the obvious failure of its ideology, the collapse of the economy and its internal and international isolation, it has now started to seek some semblance of a democracy by promulgating a constitution.

The promulgation of the constitution had been preceded by the replacement of the NIF by the National Congress as the sole political party, the establishment of the National Council, a legislative organ fiercely supportive of the ruling party, and the election of a president. Needless to say that this is the reverse order of established democratic practice. One should start with a constitution and then proceed from there. The way the constitution was then made was conspiratorial and non-participatory. A National Committee and a Technical Committee were established for the preparation of a draft constitution. After months of very serious work, the two Committees produced a draft constitution, which was submitted to the President for onward passage to the National Assembly. However, without any legal basis, the President and his advisers radically changed the draft Constitution and came out with an almost new draft, which went all the way to confirm the regime's insistence on the creation of a theocratic state. In fact, what came out was almost identical to the 1987 Sudan Charter of the NIF. This palace draft was then adopted by the National Council, with some cosmetic modifications. Then it was subjected to a referendum in which, according to the regime, 97% of the voters confirmed it. This leaves us with the question 97% of whom, as the opposition political forces boycotted the referendum.

When one takes a closer look at the contents of the 1998 Constitution, it becomes very clear that the sole purpose of the whole exercise was to give an air of legitimacy to the present fundamentalist regime and its objective of establishing a theocratic state.

- Article 4 of Chapter I 'Principles Guiding the State' states that *hakimiyya*, governance, belongs to God. This is a phrase generally used by political Islamists to monopolise power and to exclude those who disagree with them as heretics and enemies of Islam.
- Article 10 provides for the imposition of the Islamic religious duty of *zakat*, alms, on citizens, without specifying whether this applies to all citizens or only Muslims. In both cases, however, it would imply discrimination on the basis of religion. Article 16 speaks in vague and general terms about the promotion of good values and manners and purging society from corruption, crime, alcohol, and gambling among Muslims. Such slogans and ideals do not belong to a constitution. As far as they can be translated into legal principles at all, they belong to penal or even local legislation.
- Article 18 obliges public servants to devote their efforts to the worship of God according to the *Quran* and the *Sunna*. The intention to discriminate against non-Muslims is obvious.
- Article 139 provides that the sources of legislation are *shari'a* and the consensus of the people through referendum, the constitution, or custom. All these provisions confirm the regime's intention to discriminate against non-Muslims and its determination to impose its fundamentalist ideology.

Already before the constitution, the regime's actions seriously had infringed on the independence of the judiciary and rule of law. The first day after the coup, Constitutional Decree No. 2 was passed, which gave the right to the regime to dismiss any person from public service 'in the public interest'. Hundreds of judges were accordingly dismissed and replaced by young unqualified lawyers. Decree No. 3 gave the Revolutionary Council (later the President) complete authority over the judiciary, including the appointment and dismissal of the Chief Justice and judges from all ranks. The 1998 Constitution (Article 130) established a new 'Islamic' institution called the *hisba wa mazalim*. Article 130 states that the chairman and members of this body are appointed by the president and are solely responsible to him. It further stipulates that this new

organisation shall uphold justice after final judgements by judicial authorities have been made, meaning that it is given the power to reverse final decisions of the highest court! One can hardly imagine a more serious encroachment on the principles of judicial independence and separation of powers.

The second chapter of the 1998 Constitution contains several sections on basic rights and freedoms. A number of observations have to be made in this regard. Firstly, no mention is made of the obligation of the State to comply with international covenants dealing with human rights, some of which Sudan has already ratified.

Secondly, the constitution fails to make reference to some of the basic rights such as prohibition of torture, arbitrary detention, discrimination on the basis of political thought, the right to fair trial and the right of movement. All these rights were removed from the draft prepared by the National Committee.

Finally, many of the provisions of the constitution on rights are weakened by phrases such as 'subject to law', 'according to law' or 'as regulated by law'. Such phrases make the constitutional provisions on rights and freedoms subject to subordinate legislation, with the risk of abrogating these rights and freedoms.

In this regard it must be noted that in spite of the provisions of the Constitution, several laws restrictive to freedom continue to apply in Sudan. These include:

- * The State Security Act which makes detention without charge possible, and gives complete immunity to members of the security organisation for their excesses.
- * The Workers Trade Union Law which robs professional organisations and labour unions of any independence.
- * The Press and Publications Law which puts several restrictions on publications.
- * The Public Order Laws which restrict freedoms of public gatherings and discriminates between women and men in public transport, travel, work, and dress.

- Laws establishing Popular Defence Forces (*mujaheddin*) and popular police forces (militias). The Basis of Judicial Judgements Act of 1983, which requires judges to interpret laws according to the *shari'a* and, in the absence of a specific provision, to adopt their own judgement in the light of the *shari'a*, religious consensus and judicial precedents not repugnant to *shari'a*. This law, which rejects any other source of law other than *shari'a*, is an obvious discrimination between citizens on the basis of religion.
- The Penal Code and Code of Criminal Procedure, both of 1992, which provide for the Islamic *hudud* punishments, such as amputation, stoning, and retribution, and as such constitute discrimination between citizens on the basis of religion.

In relation to political pluralism, the 1998 Constitution came up with the term '*tawali*', supposedly an old Islamic concept implying solidarity and unity of purpose. The term caused tremendous confusion and leaders of the NIF went to great pains in the media and official flora to convince the people that its meaning was not different from 'pluralism'. Article 26 of the Constitution states that:

1. Citizens have the right of *tawali* and organisation for cultural, social, economic or professional purposes which should not be restricted except in accordance with law.
2. Citizens shall be guaranteed the right of political *tawali* only to be restricted by conditions of *shura* and democracy in the leadership of the organisation and using advocacy, not physical force, in competition and abiding by the basic principles of the Constitution, as regulated by law.

From all the above, it is concluded that Sudan cannot be ruled by a single political faction. The 1998 Constitution is incapable of being a basis for the governance of the country. It needs no amendment, addition or deletion, but has to be repealed and replaced by another constitution prepared by all the political forces and reflecting the nature and aspirations of Sudanese people.

In drafting a future constitution for Sudan, the following should be taken into consideration:

- Sudan is a multi-ethnic, multi-cultural society with various diversities, which should all be respected and taken into consideration.
- The country should be based on pluralistic democracy, including multi-partism, the rule of law, separation of powers, independence of the judiciary and respect for human rights.
- The State should not be based on religion or any other ideology.
- There should be equitable sharing of power and wealth.
- The country should be ruled on the basis of decentralisation in such a way to ensure participation in decision-making and sharing of the common wealth.
- Whether or not the country should follow presidential or another system must be based on a democratic decision of the people, not an imposed decision.
- The constitution must guarantee the right to self-determination for the citizens of Southern Sudan after an agreed period of transition.

Dr Peter Nyot Kok (statement)

Blocked Constitutional Options for a Just and Peaceful Sudan

A constitution is a codification of a consensus on the fundamentals of governance in its widest sense, as well as a process of how the resultant code operates or is operated in practice. The traditional classification of state constitutions into written/unwritten, rigid/flexible, monarchical/republican, federal/unitary, one-party/multi-party state constitution has been and still is extremely useful in understanding state craft. However, the most insightful classification from the viewpoint of stability and social peace in a state is the one that distinguishes between a constitution that expresses and codifies national consensus on the fundamentals of governance on the one hand, and one that does not, on the other. It further distinguishes between a constitutive practice that conforms to the letter and spirit of consensus and one that does not.

The fundamentals of governance include the nature of the state in the geopolitical and ideological senses, the system of governance, fundamental

human rights, the role of religion and culture in governance, operative principles of socio-economic and legal justice, and the manner of changing the constitution itself. A consensus on the fundamentals does not necessarily mean unanimity. In this context, it denotes an agreement by all the reactive forces (forces capable of initiating a sustaining conflict) on the fundamentals of governance, which in case of Sudan means the fundamentals of nation/state-building. Sudan is remarkable in the absence of consensus on the fundamentals of governance.

Sudan achieved independence with serious birth defects, structural injustices in the socio-economic, administrative and cultural fields. These structural injustices were compounded by deliberate policies of an ethno-regional elite with self-centred vision on national state-building. '*L'état c'est nous*' was, and still is, their credo. Some of these injustices were the consequences of the legacy left by the Turkiyya, Mahdiyya, and the Anglo-Egyptian rule. The Anglo-Egyptian rule accentuated the socio-economic disparities between the North and South, despite its attempts during the last seven years of its life to alleviate the Southern condition before independence. Indeed, there was no consensus on the timing of independence itself. The exercise of the right to self-determination, which was monopolised by the parliament, was a fraud for the South. Southern Sudanese members of parliament were persuaded to vote for the independence of Sudan on the understanding that the South would thereafter enjoy a federal status. The negative consequences of that fraud are still with us today.

Independence was achieved with a transitional constitution, a *laissez-passez* to statehood, pending the adoption of what Sudanese commonly but inaccurately call the permanent constitution. The term is supposed to mean a constitution based on national consensus, and ipso facto, a durable one. What followed thereafter was a permanent transition rather than a durable constitutional arrangement. Even the 1973 Permanent Constitution under Nimeiri proved transient, its twelve years of life notwithstanding.

What followed from 1965 to 1999 has not been a genuine attempt to found a constitution based on national consensus, but rather a struggle for supremacy of two main visions of state- and nation-building.

1. The first of these two visions is the conservative-hegemonic vision. It is mainly espoused by social forces organised in sect-based parties and as radical Islamic groups. In constitutional terms, it was embodied in the draft constitution of 1968/9, al-Turabi's 1984 Amendments to the 1973

Permanent Constitution (rejected by the then People's Assembly), and of course in the present regime's 1998 Constitution.

The present Constitution is a classic example of the conservative-hegemonic vision, which unlike the previous ones does not even enjoy a consensus in the North. As 'basic provisions and fundamentals' Article 139 (3a-g) of this Constitution mentions: Islam, *ijma'*, federalism, selective liberties including freedom of political association, executive presidency, accountability of the executive to the legislature, aspects of administration of justice, and the status of the South and its right to self-determination. In fact, all these things are subject to intensive and unresolved dispute between political forces of Sudan.

The main elements of this vision include the maintenance of the hegemonic position of one ethno-cultural group in Sudan: a united country, run from Khartoum with stingy decentralisation, adoption of Islam, Arabic language and Arab culture as the bases for nation-state building. In the socio-economic field, this vision retains the North-Central Sudan as the vortex of socio-economic development in the whole country. Other regions, according to this vision, would benefit from trickle-down effects. The forces holding this vision, have consistently blocked all searches for a constitution of national democratic consensus since independence.

3. The second vision is the redistributive-restructural vision of state- and nation-building. This vision is espoused by social and political forces of the periphery and by some progressive forces in the North as well. Its main elements are substantive decentralisation (regionalism, federalism, confederation), separation, and self-determination. Further elements are sharing resources and services; restructuring of state power in the centre to end the near monopoly of one ethnic-regional group over state power and economy; fair sharing of wealth and state power; control of the various groups over the wealth in their regions; affirmation of African, native Sudanese cultures in nation- and state-building and restructuring of institutions of power in the centre to ensure fair and equitable participation of all. This vision is also espoused by forces in the North, which are in many ways also marginalised from state and economic power.

The social forces that support the first vision had the advantage of a head start, having inherited state power from the British colonial authority. They then proceeded to build Sudan in their image. This move has triggered off a reaction mainly from the forces disadvantaged by the state formation in Sudan since 1820. These are mainly the African Sudanese, or native

Sudanese. The various programmes of their political and military organisations tended to posit the redistributive and restructural vision of state- and nation-building.

A third vision is a combination of selected elements from the two preceding visions. It was held by the social forces that underpinned the Nimeiri regime from 1971 to 1977. This vision and praxis, while retaining the hegemony of the forces from North-Central Sudan, was secularist, decentralist vis-à-vis the South, and to a lesser degree in case of the North as a whole. But it embraced or flirted with the conservative hegemonic programme because of growing pressure from the right for more hegemony over state power and economic resources of the country. It was equally faced with growing demands from the political forces of the periphery for more substantial powers in the socio-economic field. Even this model did not reflect a national consensus on all the fundamentals of governance. Its demise was due to its opportunist nature of manipulating the desiderata of conflicting forces without sincerity and commitment.

During the last ten years of the conflict, the present regime has imposed the first vision by draconian measures and the force of arms. It has equally been opposed by those espousing the redistributive-restructural model.

Negotiations for a peaceful settlement of the conflict, conducted over the last ten years, have resulted in an apparent consensus on the right of the South to self-determination, to be exercised before the end of an interim period. There is no consensus on the status and the fate of parts of the peripheral Sudan that have been victims of the conservative/hegemonic model of governance. Accordingly, a constitutional perspective for Sudan on the pre-self-determination interim period constitutional arrangements is conceivable and even feasible. However, some basic points, such as the status and fate of the Nuba and the people of the Southern Blue Nile, are still problematic.

The NDA has for example the Asmara Accord which, among other things, is a secularist, democratic and human rights oriented recipe for a peaceful interim period. It also recognises the right to self-determination for the people of the South and extends the same to those of the Nuba Mountains and the Southern Blue Nile on certain conditions. Furthermore, it also recognises wide powers for the Southern territory during a four-year interim period. However, although the NDA has a draft constitution, some of its members have campaigned to exclude the SPLA/M representative from participating in critical stages in the preparation of that draft Constitution. The result was the decision of the

SPLA/M National Liberation Council in December 1998 to have the SPLA/M prepare its own draft, which is different from that of the NDA. Furthermore, most Southern Sudanese now believe that some NDA members do not intend to abide by their commitment to the right to self-determination. They see them trying hard to undermine it in all sorts of ways, for example, by admission and avoidance, overemphasis on the unitary outcome of the exercise of that right, and trying to make the SPLA/M leadership to do likewise. They are also believed to be encouraging the Arabs, particularly the Libyans and Egyptians, to oppose the right to self-determination, and to be also cultivating or nurturing Southern Sudanese to oppose the exercise of that right. It is generally believed that some members of the NDA, once in power, would not scrupulously abide by the commitment to the right to self-determination. At the same time, the NDA has no constitution that reflects a national consensus, as yet, for reasons mentioned above. These are challenges the NDA has to resolve if it is to maintain credibility, cohesion, and effectiveness.

The government has shown more intransigence than the Northern Sudanese component of the NDA in its proposals for interim arrangements and its commitment to exercise of the right to self-determination thereafter. It practically eviscerated the KPA, which it had concluded in 1997 with SSIM/A, and subsequently with UDSE, and other Southern Sudanese factions. In fact, it is nowadays fighting the UDSF through its local proxy, if not with its own forces.

All told, we must face the reality that Sudanese reactive political social forces are *konsensunfähig*, i.e. incapable of consummating a consensus on the fundamentals of state- and nation-building. Under the present regime, a national consensus, on which a constitution may be durably based, is now difficult if not impossible to reach. The success of the regime in controlling the state apparatus and the commanding heights of the economy in the centre has ironically reduced the chances of a real national consensus although it has increased the frequency of talk about reconciliation within the North. A NIF state, or any one-party state, is not based on and cannot be the basis of a genuine national consensus on the fundamentals of state- and nation-building. For a national consensus to be feasible there has to be an agreement on a demonstrably effective denial of Sudanese state and society.

The above analysis leaves us with the following options:

- I. The war continues until one side has triumphed, and attempts to impose its vision on the country. This option, aside from the material and human cost

it entails, is unlikely to be a solution. A military victory for one side may be feasible, given the various and different meanings of 'victory' in this type of war. But it is not clear whether such a 'victory' can be converted into a durable political asset without a political agreement of some kind, because it may be one thing to win militarily, and quite another to impose one's world-view on others successfully.

2. A viable constitutional perspective would build on the points of consensus present in the IGADD DOP, which are:
 - (a) The centrality of human rights and the rule of law to any interim arrangements;
 - (b) The affirmation of a consensus of the right of Southern Sudan, the Nuba Mountains and the Southern Blue Nile to self-determination in separate, but free, open and internationally conducted and supervised referendums;
 - (c) A referendum law;
 - (d) Constitutional arrangements that contain measures for the redress of structural injustices in Sudan;
 - (e) Disengagement of forces prior to the referendum;
 - (f) Suspension of all oil development activities in the South until an agreement has been reached on peaceful resolution of the conflict.

The forces of hegemony would have to give up their hegemonic agenda so as to make a consensus on a redistributive-restructural model possible. Indeed, the Asmara Accord of 1995 promised such a change of attitude. But it seems that the forces of hegemony have not, in fact, embraced the essential elements of the redistributive-restructural vision.

Dr David de Chand (discussant)

Sudan, since independence, has missed the opportunity to build a constitution. The country did not have a vision. We could have sat down as a multi-cultural society and drafted a constitution that would have reflected our cultural diversity. A constitution is a social contract between the governed and the governors. The power should always be with the people. The people elect and

dismiss their rulers. In Sudan we did not have such a constitution because we lack national consensus on a vision for nation-building. We lack trust, confidence, democracy, and participation of all Sudanese in the political process. What has happened is that some of us believe that they are the state, *l'état c'est nous*. The constitutions we had were always framed to serve their interests.

Whenever a constitution was drafted there had always been a hidden agenda, namely, the creation of a theocratic Islamic state. In 1956, the DUP and Umma were against an Islamic constitution, but by 1957 they made a joint statement that they wanted Sudan to develop on the Arab-Islamic past and that the constitution should be derived from Islamic law. Thus, it became the policy of any government in Khartoum to always include the issue of *shari'a* in any constitution that was drafted. The military regime of Abboud (1958-64) started to implement the joint statement made by the two parties and began the process of Arabisation and Islamisation of non-Arab people, particularly in the South. Instead of recognising the heterogeneous nature of Sudanese society, they wanted to build a homogenous state. After Abboud was overthrown in 1964, Sadiq al-Mahdi gave a lecture in Khartoum Bahri in 1965, in which he spoke of the 'subtle process of Islamisation in the South'; and he is still committed to that. In spite of his membership in the NDA, his difference with the government on the issue of making Sudan an Islamic state is very slim. If they would come to power in Khartoum today, I do not think they would have the guts or the intention to repeal *shari'a* law. In fact, al-Mahdi had failed to do so when he was in power between 1986 and 1989. The coup of 1989 started off a rigid Islamisation and Arabisation policy. The regime declared jihad against the non-Muslims in the South. During the past ten years, the war in the South has been fought under the name of jihad, and used to exterminate, displace, exploit and enslave Southerners.

As for our participation in drafting the 1989 Constitution, I can say that initially, we disagreed with the government about it because we thought that this was not the right time to make a constitution. The constitution was derived from the KPA Chapter 3, which speaks about constitutional and political matters. Our vision was that this Chapter could only be enforced after the South had decided, through a referendum, whether it would remain part of a united Sudan. We eventually decided to participate in drafting the constitution because we wanted to protect our interests and because we still thought that the government was sincere in its commitment to the KPA. But even when we were working on it, our hands were tied. I was in the Technical Committee with Dr Rasheed. When we eventually submitted our draft to the Federal

Bureau, it comprised more than 205 articles. But as soon as it reached the presidency, the draft had only 145 articles! So indeed, a surgical transplant took place somewhere.

Dr Ali el-Hag

It was plastic surgery! (laughter)

Dr David de Chand

Anyway, some kind of surgery took place somehow. A lot of alteration had taken place without consulting us. This means that there was a hidden agenda. Recently another committee has been formed to do another surgery on the constitution. All that was to make sure that the constitution serves the interests of the ruling party, the National Congress, with the ultimate goal of establishing an Islamic state. We think that the present Constitution in Sudan is an Islamic constitution, designed to perpetuate Islamist ideals.

So what remains for us Southerners is to push for an immediate referendum in the South so that its people can decide their political destiny either with or without the North. For us, there is no way to accept living in an Islamic state under an Islamic constitution. So depending on the outcome of the referendum, we can either draft a constitution that recognises the diversity of the nation and is based on national consensus, or - when the South opts for separation - the North can go ahead and develop an Islamic constitution.

Mr Ahmed Ibrahim Diriage (discussant)

Dr el-Rasheed in his capacity as Chairman of the National Constitutional Commission tried to convince us that the procedures followed in the formation of the Constitutional Commission, as well as the subsequent steps taken by all those concerned leading to the finalisation of the 1998 Constitution, were correct and proper.

In my view, however, the present government, composed of an alliance between indoctrinated military junta and an ideological Islamic fundamentalist party, is not qualified to make a constitution able to win the consensus of all the people of Sudan. For a constitution to be binding and respected by all the people, it must reflect the views and protect the interests and beliefs of all citizens without discrimination. What is required for constitution-making, is a government of national consensus which includes all political, social and

cultural interest groups in the country. In case of the 1998 Constitution, however, the majority of the delegates who attended the Constitutional Conference were members of the ruling Islamist party, while most of those belonging to other parties or organisations boycotted the Conference. Moreover, the government reviewed the draft presented by the Constitutional Commission, amending it to suit its ideologically oriented policy.

I agree with the critique presented by Dr Kok on the 1998 Constitution. However, Dr Kok seems to be more interested in the issue of Southern Sudan than the issue of peace and unity for the country as a whole. In particular, he seems to be more interested in the issue of self-determination for the South than anything else in the peace process.

I also fully agree with the excellent critique of the 1998 Constitution presented by Dr Medani in his paper. I do not think I can find anything in his paper to disagree with.

My own view about the prospective constitution for Sudan is that it should take into account the following structural realities.

1. Sudan is a very large nation in size. As the ninth largest country in the world, there is no country of similar or larger size which is not governed on either federal or confederate basis. Similar countries in size, like, India, Pakistan, Nigeria, Brazil and the US are all federal or confederate nations. But Sudan is neither.
2. Sudan is a country inhabited by people of different ethnic and cultural diversities. The two main ethnic groups are Arabs and indigenous Africans. Almost 70% of the population is indigenous. The indigenous groups are mainly concentrated in the Southern, South-eastern and Western parts of the country. The most significant cultural division is based on religion. Almost 70% of the population are Muslims while 30% are Christians and followers of indigenous African religions. In spite of this diversity, all the governments that have ruled Sudan, since independence, have tended to consider Sudanese national identity as Arab and/or Islamic. As a result, an identity conflict has developed among the various religious and ethnic communities which threatens national integration. Problems of ethnic or religious diversities are best solved by giving each ethnic or religious group the right to express and pursue its own way of life within a federal or confederate union, as in Switzerland or Belgium where different ethnic and cultural groups live harmoniously. Furthermore, the constitutions of

nations composed of such ethnic or cultural diversity usually contain bills of rights which safeguard the basic rights of each group. The Constitution of the US of may serve as an example here.

3. Sudan is a relatively new state created by the Turko-Egyptian conquest of 1821 out of independent native kingdoms and tribal homelands. Due to many factors, including the sheer size of the country, the lack of communication systems, and the colonial administrative policies that were intended to keep the people of the various regions physically and culturally isolated from each other, the peoples of the various parts of Sudan did not have enough time to integrate. In similar circumstances, where a new nation is created out of several previously independent states, a federal or confederate union is the most convenient way of association, as it allows regional diversities to be accommodated peacefully. Good examples in this respect are Germany and the United Arab Emirates.

Based on these objective realities, the prospective constitution for Sudan must take into consideration, among other things, the following points:

1. Ethnic and cultural diversities must be recognised and accommodated. No cultural or ethnic domination by any ethnic or cultural group should be allowed.
2. Sudanese national identity should be based solely on citizenship and not on ethnic or religious identity, hence it is necessary to provide for a bill of rights in the constitution.
3. In a large and culturally, ethnically and regionally diverse country, like Sudan, centralised administration has proved a failure. The only suitable alternatives are either federal or confederate system.

Dr Ali el-Hag

I am ambivalent to discuss the issues raised here. We have seen how the constitution was drafted. We have been discussing all these things with Sudanese people generally. Now here in Durham some people ask us to discuss the Constitution on the assumption that it had been a one-man-show or the programme of a certain party, and that the whole way it was done was not proper, legally and constitutionally. I think that that approach is not conducive.

This government has started as a military government, that is true. But military governments in Sudan are as common as civil ones, so there is nothing exceptional about it. A military government is nothing new in Sudanese political culture. Some of you here have been participating in other military governments. But I think one of the good things about this military government is that after some time it moved spontaneously to civil rule and demilitarisation and came forth with a constitution. That is something people should appreciate.

The opposition was against the National Committee, and some people in Sudan, who had been invited to join the Committee, refused to participate. This is quite fair, if you are nominated and you do not want to participate, we are not going to impose it on you.

Despite what I hear from some people here, Mr Mawal, Dr el-Rasheed and the others who were in the National and Technical Committees, they did a great job! I admit that some plastic surgery had been done on their draft, but this improved rather than worsened it. The draft of the National Committee was not to be considered final. Dr Medani knows that anything the government does is according to its terms of reference. It is designated that it should go to the President first and then the President takes it to the parliament.

I think we need a more pragmatic approach with regard to the constitution. Rather than rejecting the whole thing, we can discuss it on the understanding that there are many areas which can be improved and even deleted. If we start saying here that the whole constitution is a fake, we will not come to any sort of consensus. Instead, we should take the constitution, go over its chapters, examine the issues of power-sharing, the judiciary, and so on, and see where we agree or disagree. I am strongly for this constitution, and I am not apologetic about it. I am not saying that I am committed to every phrase in it, but generally I accept it.

I have seen what the Asmara Declaration says on the constitution and the transitional period. It might be a good idea for our next meeting to compare it with the constitution and see what the differences are, so we can achieve a consensus. One big difference between our Constitution and the Asmara Declaration is that we are not living in a vacuum. We do not leave things to chance.

By the way, it is not an Islamic constitution. An Islamic constitution might come later! There are so many Islamists who think that this is not an Islamic

constitution. We have been attacked by the NDA, the Western powers and now by you here because this constitution is 'Islamic'. On the other hand, we have been attacked by most Islamists who say that it is not an Islamic constitution. So we have to view this constitution as a compromise.

So here we are: the military government has gone back to civil rule and now we have made all these steps towards building a constitution which is supported by the majority. But in spite of all this, we are ready to listen to your alternatives.

Now regarding our discussion yesterday on peace efforts, I have a number of points to make regarding what was said by Mr Malwal, Mr Diriage and others. First of all, the fighting in Sudan is not North-South, it is Sudan-Sudan. There are Northerners and Muslims in the SPLA/M and in this government there are Northerners, Southerners, Muslims and non-Muslims. To refer to the war as North-South is only a tradition.

As for the KPA, I accept that as a document for the whole of Sudan, especially now that is enshrined in the constitution. I want to remind brother Mr Malwal and others who say that they were not part of it, that they themselves decided not to be part of it. However, we do not view the KPA as the only right thing, the ideal thing we want to impose on you. But we say: this is what we have done and we believe that we have done a good job. If there are other people who do not think so we would like to see their alternative. Instead of saying we are not part of the KPA so we reject it, we should examine it and try to modify and improve some of its chapters, such as those on power-sharing and self-determination. So now we ask you: what alternative do you have? We are open to look at that, whether it is a modification or a complete alternative. That is our very open approach as far as peace in Sudan is concerned.

Another issue we can discuss is the interim arrangements. Aside from the question whether or not we accept the KPA and the constitution, it may be more productive to speak about the interim arrangements, since we all agree that we want to stop the war. We need a transitional period in which we discuss the issues of the KPA, the constitution, power-sharing, and self-determination. You cannot go on fighting and then discuss it. As I have already said: if you want a separate South, you do not need to fight; and if you want a united country, you do not need to fight either, because we have all accepted self-determination. So let us come to an interim arrangement. How do we perceive such an interim arrangement? What shall we do and what issues must be discussed during the interim period? We can continue to discuss these

constitutional issues on and on, but it may be more practical to confine ourselves to trying to agree on an interim arrangement.

Mr Diriage, what you say about the governance and how people are selected, mind you, has been changed now. What the Constitution now says is that the governor should be elected directly.

Dr el-Tigani Seisi

As a constitution should be a contract between the governed and the governors, I strongly believe a constitution cannot be reached without consensus. I think it is vital for the country, whether it will remain united or not, to hold a national constitutional conference to achieve such a consensus. Questions such as wealth-sharing can never be tackled by one or two people, but only in a conference that includes all parties.

The question, Dr el-Hag, is whether this government is willing to sit with the others in such a conference. I wonder, however, whether this government is genuine in its attempts to achieve a comprehensive settlement. A National Commission for the Constitution and another committee to make amendments to the Constitution seem to exclude any future prospects of holding a national constitutional conference.

Mr Bona Malwal

I want to restate a position that I have been expressing since yesterday. However intellectually inspiring, I do not think that our discussion on constitution-making will help us to solve the conflict of Sudan. In fact, it only confuses the situation. Such discussions are based on the misconception that the problem of Sudan is a constitutional problem. As a constitution must be based on consensus, and as we cannot have consensus, we cannot have a constitution. Dr Seisi talks about a constitutional conference, but how am I going to participate in such a conference when I do not want to be part of this Sudan? We are talking about issues that do not really apply to the situation we are in.

If the Northern political parties plus the government have accepted the principle of self-determination, the only useful thing now is to discuss how we are going to implement it. During the transitional period, Dr el-Hag, Mr Diriage, Dr Seisi, Dr Medani, all of you are welcome to persuade the people of Southern Sudan to remain in a united country. In the same forum, I will try to

convince them that they should separate now that they have the chance. When through the referendum the people decide to remain in a united Sudan, then we can start discussing constitutional issues in a constitutional conference, but now it is a waste of time. If our discussion here is to bring the war to an end, then Dr el-Hag should go to the next meeting of IGADD and say: we all agreed on self-determination, so let us now discuss the modalities that can lead to its implementation.

Dr Abdelsalam Sidahmed

First I have a question for Dr el-Hag. There is a provision in the KPA, saying that the federal legislation should be secular while the states can individually adopt *shari'a* legislation. Now if there is a conflict between the two, which one has preference: the federal or the state legislation?

There is a tendency of Sudanese military regimes to start abolishing and suspending all the efforts in peace-building and constitution-making of the previous government, and start all anew. When this regime came to power in 1989, five years of peace negotiations were just written off.

Some people here seem to imply that if the South separates, the North can have its Islamic constitution and everybody is happy. This is a simplification. A separation between North and South would not really solve the controversy over the Islamic state and the Islamic constitution. The question is not just one of Muslim versus non-Muslim. Also among Muslims there are differences on this point. Among the Islamists, there is no clearly defined concept of what an Islamic state should be like. Many essential questions are not resolved, and they will have to confront them sooner or later. Take the question of accountability: who rules in the name of Islam? How is such a government accountable to the Muslim community? That question is important to tackle, because within this government there is a perception that since the NIF has been campaigning in the name of Islam, it has raised itself above the law. Nobody is allowed to question or inquire even their Islamic credentials. The idea is simply that once you speak in the name of Islam, nobody is allowed to touch you. We do not know about the personal behaviour of the members of the ruling party. We do not hear of them being lashed or punished for corruption. Turabi has recently stated that corruption was 9%, but no investigations have been launched to find out about it. And that is supposed to be an Islamic government!

Dr Mansour Yusif el-Ajab

The problem of Sudan is a socio-economic problem. Certain groups have monopolised surpluses at the expense of others. It is not a problem of North versus South, but of the NIF against Sudanese population. I believe in the unity of my country, but not in a unity that excludes parts of the population. Now we have a one-party system in Sudan, an ideological party that represents less than 15% of the population. For a constitution to be effective, it has to be inclusive. You cannot talk about a constitution when people cannot even open their mouth. To solve our problem, we need democracy, not this *tawali* you are talking about and which nobody understands. IGADD can be a very good platform, but it should include everybody.

Dr Pauline Riak

We talk about the inclusion of marginalised groups, but let me quote three fragments of words spoken by my brothers in this room to demonstrate how we, as human beings, are socialised to unconsciously exclude others. One brother spoke of 'governors and the people under him', another said: 'Attention, my brothers!' and another said: 'Why cannot they elect the man they want?'

Dr el-Hag told us that those who disagree with the present Constitution should come with alternatives. That is reasonable. Well Dr Ali, I would like to present you an alternative written after eight months of discussion with more than 4,000 women from Southern Sudan and the Nuba Mountains. We do not think that there is, or ever was, a constitution in Sudan, not even during the British era. We drafted this document, which we think envisages the aspirations of Sudanese women. In it, we endorsed the principle of self-determination as an inalienable right of Sudanese people. If you look at this document carefully, you will see that, as far as consensus is concerned, the document written in Khartoum is null and void.

Dr David de Chand

Dr Seisi said that the implementation of self-determination in the South will not end the war because there are other problems in Sudan. I think the South cannot be held hostage by the fact that there are problems in other regions in Sudan. IGADD is not the forum to solve these problems as it was specifically designed to deal with the problem of Southern Sudan. We Southerners will never allow IGADD to be expanded.

I am aware that there are other problems in the Nuba Mountains, the Southern Blue Nile, the Beja region in the East; but let me remind you that in August 1998, in Addis Ababa, the two SPLA/M representatives, Commander Yusuf Kol of the Nuba Mountains, and Commander Malik Igar of the Ingessana Hills, made it abundantly clear that although they were fighting with the SPLA/M, they were not fighting to become part of an independent South. So that statement took a heavy burden from the back of the SPLA/M.

Dr Amin Mekki Medani

Dr el-Hag, we agree that the constitutional committee did a great job, but you did not do a great job because you changed what the commission had done. You say that you invited the opposition to participate in the commission, and that they themselves refused to do so, but considering what you did with the draft of the commission, their refusal is quite understandable.

You say we should compare the present constitution with the Asmara Declaration. This would be a fruitless exercise, however, because the fundamental difference between them is clear, namely, the difference between a religious and a secular state.

You ask us to talk about issues. Well, that is what we are doing. We are talking here about federalism, presidentialism, self-determination, and political pluralism. The draft Constitution of the National Commission provided for political pluralism and freedom of association, but in the present constitution this is replaced by your concept of *tawali*. As for the independence of the judiciary, I can tell you that the present Chief Justice is the first in the history of Sudan to belong to a political party and to have ministerial power. Furthermore, we said that you still have laws in Sudan that are unconstitutional, even by the standard of your own constitution, such as the Trade Union Law, and the National Security Law. The Press Law has been changed, but in spite of this a newspaper, *al-Ra'y al-Akhir*, was banned recently. They went to court and the judge decided that the ban was illegal, but then a presidential decree overruled the court order. What kind of constitution is that? We talk about provisions in the constitution that are theocratic. You have the Sources of Judgements Act, the Penal Code including the *hudud* punishments, such as amputation, you have a law for apostasy. And then in the end you tell us that this is not yet an Islamic constitution! Dr el-Hag, you ask us to discuss issues and come with alternatives; at the same time you say that the real Islamic constitution is yet to come. That does not make sense to me.

Dr Khalafallah Rasheed

The English translation of the word *tawali* is political association. In fact, in Arabic there are many interpretations of this word, but in the English version of the Constitution, as it was translated by a committee headed by Turabi, the term is translated as political association.

Dr el-Tigani Seisi

I thought that in this seminar we were going to discuss the whole problem of Sudan, but it seems that the emphasis is put on the North-South issue. Of course Mr Malwal and Dr de Chand have the right to approach the problem from this angle, but at the same time I have the right to approach the problem from the larger context. I do believe that the problem in Sudan is not only North-South. Indeed there is a war that has raged in the South for a long time, but this war now has moved to the North as well, to the Nuba Mountains, the Ingessana Hills, and Eastern Sudan. In this context, I think that the only platform where we can seriously address our problem is a constitutional conference in which we discuss the constitution as well as other issues. I completely disagree with those who claim that the issue of a constitution is not important right now. We do have a constitutional problem in Sudan. At present, we have a constitution that is approved by a parliament that does not represent the consensus of Sudanese parties concerned. So there has to be a constitutional conference to draft a new constitution agreed by all the parties to the conflict.

Dr Peter Idenburg

I want to draw your attention to the last page of Dr Kok's statement, because it gives a kind of synthesis of the various points of view which could be a very good basis for our further discussions.

Dr Ali el-Hag

Dr Seisi asked whether we are genuine in our peace efforts. The answer is: of course we are genuine. But how genuine are we, and how genuine are you? We do not want to go into such questions. At one point, the American Ambassador asked us: are you honest? I asked him: are you talking to me? I am as honest as you are! So I think we are genuine; we are as genuine as you are. I cannot say more than that.

Regarding the constitutional conference, I have the following to say. Neither this government, nor myself, think that we need a constitutional conference. It does not seem logical. We have started this process of constitution-making. We formed a National Committee, a Technical Committee, we gathered people from all walks of life and went through all the processes of legislation. Then it was subjected to a referendum in which 9 out of 11 million Sudanese have voted for this constitution; that is more than a constitutional conference. Therefore, as far as I am concerned, there is no need for a constitutional conference. On the other hand, the constitution we have now, can be amended, revised, or changed. In the constitution itself, it is enshrined how it can be amended.

In this connection, I want to say that we are not against Westernisation, but we are selective. There are things in the West we can accept and other things we can reject, as there are things in Sudan we can adopt while rejecting other things. But it is a fact that there are people in Khartoum who are against the West. This is a reality we have to accept. As we talk about freedom and liberty, we cannot deny them to say what they want to say; to suppress them would be an infringement on their basic human rights. And by the way, federalism is not a Western concept; it is related to the Constitution of Madina (Mithaq al-Madina).

Mr Malwal has made an important point: before we can discuss the constitution we first need to discuss and achieve peace. In fact, we think that we have already done all that. We have already talked about peace, concluded a peace agreement and agreed on a constitution in which that peace-agreement is enshrined. As we have already done much, as far as peace is concerned, I personally think that we can discuss the constitution here. But Mr Malwal disagrees with that, saying that he is not part of the KPA, and that therefore we have to achieve peace first and then later on we might talk about the constitution. Fair enough, I appreciate that point and it is consistent. Therefore, I think our priority now is to have peace and after we have achieved that we can talk about the constitution.

As far as peace is concerned, the most important point of divergence now is the question of which forum is most appropriate to discuss this. We have IGADD and the Libyan-Egyptian initiative. Although I have my reservations about IGADD, which I made clear in my paper, I still believe that it is the forum to discuss the issue of the South. As for the Libyan-Egyptian initiative, I think it concerns the NDA indeed, as it basically deals with the problems of the Northern Sudanese political parties. I am against merging the two forums, as

some people here have suggested. We have to face it: there are North-North problems, South-South problems, and problems between the North and South. If we are going to amalgamate things, it will be at the expense of the problem in the South. We know that the issues cannot be separated and that the issues of power-sharing and basic human rights are important for both North and South, but I think the forum should be different. So I am against merging the two initiatives, but if some people think otherwise, we are open to discuss it. As for the issue of religion, from the political point of view you cannot separate religion from politics. The interrelation between the state and religion is a fact so you cannot be evasive about this.

Dr Sidahmed, to answer your question about federal and state legislation, I can quote the KPA Chapter 3 on political issues:

- (a) *Shari'a* and custom shall be the source of legislation.
- (b) On the issue of *shari'a* the parties agree on a formula under which laws of a general nature that are based on a general basis common to the states, shall apply at the national level, provided that the states have the right to enact any complementary legislation to federal legislation on matters that are peculiar to them.

Dr Abdelsalam Sidahmed

But what about in case of a contradiction? If any state decides to enact a legislation based on *shari'a*, and then someone in that state makes a suit on the basis that he or she is not a Muslim, then there is a contradiction between the federal and the state legislation. There is nothing in the agreement which says how this can be resolved.

Dr Ali el-Hag

The provision does not cater for the personal level, only for the state level. If the federal state has a law, which is *shari'a*, for example, then the state has the right to legislate otherwise.

Mr Bona Malwal

The operative word is 'complementary'. The states will legislate 'complementary' to the federal legislation. So anything that is not complementary will obviously be rejected.

Dr Abdelsalam Sidahmed

Two things are not clear to me now: firstly, what is the nature of the federal legislation, is it *shari'a* or secular? Secondly, if there is a conflict between federal and state legislation which one will have supremacy?

Dr Ali el-Hag

The federal has got the supremacy. The KPA reads: 'In case of dispute over the residual powers between the states and the federal authority, the dispute shall be referred to the federal court.'

Mr Ahmed Ibrahim Diriage

I must say that I feel uncomfortable because I thought that we had come close now to solving our problem through IGADD and the Libyan-Egyptian initiative. I thought that the issues had been narrowed down by the IGADD DOP which was accepted by the government, the NDA and the SPLA/M. It seemed that all that remained was to come together and discuss the details. But now I feel that some people are still doubtful about what we agreed upon.

I am very surprised to hear Dr de Chand and Mr Malwal call for an independent South. In all the conferences we attended before, people were discussing the IGADD DOP, the interim period and eventually self-determination through which people can decide whether to remain united or not. But now Dr de Chand and Mr Malwal say: let us go ahead with self-determination now and see whether we can live together or not. This is a new thing. We have to take into account, however, that in the NDA we still have Southerners who are still going along with what we have agreed on in Asmara, and what we have agreed on recently in Libya.

Dr el-Hag said that this Constitution can be amended, but he does not want to consider the option of a constitutional conference. I think if we are going to negotiate, they should come with an open mind to the extent that the option of abolishing this constitution and making a new one should not be excluded. Constitutions are means, not ends in themselves. If they do not fulfil the purpose for which they have been made, they can be discarded. This Constitution is a reflection of the ideology of this government and the peace agreement on which it is based excludes a large portion of the North as well as the South. Such a constitution will not function. And indeed, the problems that

were supposed to be resolved by this Constitution are still there; there is no peace.

Dr el-Hag said that there is no need for a discussion on the constitution now because people have not reached a peace agreement. But I think it is relevant to discuss constitutional issues now because when we will eventually reach an agreement, we will need a constitution. It is a good thing to start thinking now about the options open to us. In the end, these issues have to be decided in a constitutional conference in which all parties and regions are represented.

Dr el-Hag described IGADD as derailed, which means that in spite of its continued participation, the government does not think of IGADD as the right forum for continued negotiations. Now the government has also accepted to participate in the Libyan-Egyptian initiative, but again it seems that this is just a lip-service. It seems that the government is not really serious about either forum, because now Dr el-Hag comes with a third option, which is direct negotiations without a mediator. But they have not told us yet how exactly they want to do this.

Dr Abdelsalam Sidahmed

I want to add my voice to those who emphasise that a comprehensive settlement is needed. It is not just a question of South-North conflict. I do not care whether you call it a constitutional conference or give it another name, but the important thing is that it should take place.

The people in the government should not think that all problems have been solved and that the final chapter in the political history of Sudan has been written. As for the SPLA/M, it has actually been emphasising, since 1983, that we are no longer speaking about the 'problem of the South' but about the 'problem of Sudan'. It should not reverse this now, fifteen years later. All right, many things went wrong, but our thinking should be more sophisticated than just regressing backward into old mistakes.

Mr Bona Malwal

I think certain landmarks have been achieved in the Sudanese peace process. All people have agreed to the principle of the right to self-determination for the people of the South. To me there is no reason to further discuss generalities. We want to discuss the details of how to carry it out. I therefore suggest to the IDF that this is what we should do in the coming conference in The Hague. We

have to discuss arrangements for the interim period such as the kind of government we want to have in the centre, the kind of government we want to have in the South, security arrangements, and the question of how the monitoring and supervision of the interim period will be organised. All this should then lead to the vote in the referendum. This kind of thinking carries the process forward.

The IGADD peace process is something different from the Libyan-Egyptian initiative. The IGADD process is trying to find a solution to the conflict in Southern Sudan. As we want a comprehensive peace for Sudan, I would be prepared to open up IGADD to contain the Northern parties. But I am against the amalgamation of the IGADD process with the Libyan-Egyptian initiative because of the inherent contradictions between the two processes. The IGADD has accepted the principle of self-determination and the Libyan-Egyptian initiative rules it out. So I do see a role for the Northern political parties in the IGADD, but I do not see a role for the SPLA/M in the Libyan-Egyptian initiative.

Now if we agree on this perception, we will have something to move forward, to implement the principle of self-determination. Only after the South has opted for unity, can we start discussing the constitution.

Dr Mansour Yousif el-Ajab

I fully support Dr Seisi when he says that we need a comprehensive political settlement. Compartmentalisation of the problem will lead us in a dangerous direction.

The government refuses a constitutional conference because it wants to deal separately with its Northern and Southern opponents. There is oil in Southern Sudan, a very important resource. They will fight to the last man for that oil. The same applies to my Southern brothers. They have been waiting all their life to get that resource and get out of their situation of backwardness. If the government of Sudan refuses a comprehensive approach, they will push me to a dead end. Up to this moment I have never considered the option of carrying arms, but if you push me to a dead end I will go for that option!

Regarding the relation between religion and politics, I have the following to say. I am a believer, but I feel that every person has the right to determine his relation to God. The propagation of good values is the responsibility of civil society, not the state. We do not need a theocratic state.

Dr David de Chand

The problem facing Sudan is the problem of the South. Whoever is in power in Khartoum will be facing that problem. We understand that there are other problems in Sudan, but the solution is different. Some people want to merge the IGADD with the Libyan-Egyptian initiative, but I think that is very dangerous for the SPLA. They should stop being ambivalent and re-examine their relation with the NDA before they are drawn into something that will be detrimental to the South. As far as I know, the government and the NDA have an agreement now, to which the SPLA is not a party. It began with the negotiations between Sadiq al-Mahdi and Hasan al-Turabi, who then had their private dealings with Uthman al-Mirghani, Ghazi Salah al-Din, and Ali Taha. The time has come for the people of the South to sit together and discuss whether they will merge the SPLA/M and the SSIM/A, or form an alliance of two separate organisations, so as to face the NDA.

Dr el-Tigani Seisi

For the past nine years, I have never been so confused, as far as Sudanese politics is concerned, as right here in this seminar. I was one of the founding members of the steering committee of the NDA since 1990. Right from the start we have addressed the issue as a Sudanese issue. The particular problem of the South is part of the larger problem of the whole of Sudan and it can only be resolved through a consensus of all parties. Now I get the impression that we are here to tailor a straight-jacket for the problem of the South. If that is the case, why are we here? A new direction is emerging here which says that Southerners should forget everything that has happened before and form a Southern front to work on the technicalities of how they can break away. But the North - the government as well as the NDA - recognises the right of their Southern brothers to self-determination. So why should there be forces in the South that call for a complete rejection of whatever has been agreed upon between the SPLA/M and the NDA? I think the problem of self-determination is just a matter of time, but Southern Sudan can only achieve the practical process of separation through an agreement with the whole spectrum of the political forces in Sudan.

As for the Libyan-Egyptian initiative, I opposed it right from the start, simply because I think it diverges attention and effort from the IGADD process, which I think should also include the Northern political forces. The government's enthusiasm for the Libyan-Egyptian initiative can be explained by the fact that

it fits into its strategy to compartmentalise Sudanese problem into smaller problems in order to avoid the achievement of a genuine solution.

Dr de Chand just referred to recent talks between the government and the leaders of the traditional parties, which he understands as an agreement between the Northern parties and the government that excludes the SPLA/M. But I do not think that talking to the government is forbidden for members of the NDA. What should materialise from such talks is a comprehensive settlement for the whole of Sudan.

Mr Bona Malwal

We should not misperceive each others' positions. I have not said anything that rejects what has been agreed upon in the NDA. All I have said is that there are agreements within the NDA which we should carry forward. If anything threatens the process that was agreed upon within the NDA, then it is the people who are coming with new initiatives. All I have rejected is the participation of the South in the Libyan-Egyptian initiative, because it rejects the principle of self-determination.

Dr Mansour Yousif el-Ajab

Are we going to arrive at the interim period through a settlement of some sort, in which we are going to stipulate what the interim period should be like? And will this agreement be between the South and the government or between all Sudanese forces?#

Mr Bona Malwal

We are discussing self-determination as a principle. It can be implemented as a principle, whoever implements it. But this principle cannot be implemented without certain modalities.

Dr Mansour Yousif el-Ajab

I do not understand. An agreement on the interim period between which parties?

Mr Wani Rondyang

I want to make a remark about the discussion between Mr Malwal and Dr de Chand, on the one hand, and Dr Seisi and Mr Diriage on the other. There is no contradiction or mutual exclusion between solving Sudanese problem as well as solving the particular problem of the South, because the result of a *comprehensive solution* can be specific. Some people think that when we come to talk about constitutional issues, we implicitly accept a united Sudan. But that should not necessarily be the case; we could talk in a way that includes all the possibilities: a united and a partitioned Sudan. The outline of the IDF project clearly states that: 'In the conference, constitutional perspectives will be discussed, both for Sudan itself and for a possible future independent Southern Sudan'. This should be our guiding point.

As we are going to have a referendum in the South, what we actually want to talk about here is transitional arrangements. The term 'constitutional conference' gives some the impression that they will agree to discuss a constitution whereby they are going to be united. Therefore, we should perhaps remove the word 'constitutional' and think about it as a political conference, maybe in stages, like this one, about transitional constitutional arrangements. I think we need to clarify this point instead of thinking in frames of mind which put us into compartments.

Regarding the regime, the SPLA/M has made clear its position. Whatever Dr el-Hag says, there is no way to convince the other Sudanese that this regime can be reformed. Dr el-Hag himself confirms this as he said that the regime is there to stay; they do not want a constitutional conference because they have already written the constitution, and whether you like it or not, you can either join them or keep out. So the only option left to us Southerners and other Sudanese to solve Sudanese problem is to remove the regime.

Dr Peter Nyot Kok

First, I would like to observe that although we are not here to reach an agreement, we also should not give the impression that we have come all the way to Durham for a mere conversation. What has been said here, I guess, will find its way into some constructive system. I take this seminar seriously.

Let me comment on the peace process first and then move to the discussion of my paper on constitutional options. On the issue of peace-making the positions are clear. By the way, I am a member of SPLA/M; but I am not here to talk on

behalf of the SPLA/M. I think that the peace process should continue to be governed by the IGADD DOP. That is a cornerstone and at least something all parties have agreed upon. You may recall that the present regime did walk out of the peace process in 1995, and then returned in 1998. Therefore, the IGADD DOP contains at least those basic things on which we have agreed. Anything outside this really threatens to put the peace process into uncertainty.

The Libyan-Egyptian initiative, for instance, really brings us back into uncertain waters, because there are no basic principles on which the parties have agreed. In fact, the initiative consists of pinpoints, and as such is less solid than the DOP. To Southern Sudanese, in all honesty, the Libyan initiative undercuts the DOP. It talks about cease-fire as a main point, while in the DOP this comes as number six, only after all the arrangements have been worked out, including interim arrangements. Indeed I think that cease-fire should only come after or as part of an agreement. In that way, people will be interested in maintaining the cease-fire, as it protects what has been agreed on.

Moreover, there is a new development in Sudan that has to be considered in this context: the government is now feverishly involved in drilling and selling oil. Oil is a strategic commodity. Even without an agreement or cease-fire, the fact of a strategic commodity being utilised by the other party for its benefit is a new situation. We can see that on the ground in the shape of tanks, helicopter gun-ships, heavy artillery and chemical weapons. It would be foolish for any party opposing the regime to conclude a cease-fire while the regime is drilling and selling oil. So to talk of a cease-fire without an arrangement for suspending the oil-operations would be unacceptable to those who think that they are going to be targeted by the increased capacity of the present regime to wage war.

So regarding the search for peace, I think we should stick to the DOP. If the IGADD countries are unable to achieve peace, for reasons of internal quarrels, we will have to discuss how to get the negotiations forward on the basis of DOP with some other acceptable supervisor, and I do not exclude the IDF from this role. But the involvement of the neighbouring countries should remain an essential point in the mediation. To us the definition of peace-making entails the involvement of any force that can undermine peace. That is why we are ready to talk with the NIF, because it is a force that can undermine peace when it is not involved in it. Therefore, we still have to include the countries of IGADD in any peace-making process, because, one, they started it; second, they are neighbours; and, three, they can undermine peace if they are not part and parcel of it.

Regarding my statement on 'blocked constitutional options for a just and peaceful Sudan', I want to say the following. As you might have discovered, I dwell a lot on consensus, because like all good constitutional lawyers, I think that you cannot have a good constitution unless you have a pre-constitutional consensus on the fundamental principles of state- and nation-building. In the present Sudan, there is no consensus on such fundamentals. Sudan is maintained by the force of the state. This force has been able to keep us together formally, but now we are not really together anymore. In fact, the constitutional reality is now that there are two constitutions operative in Sudan: the Constitution of 1998, which is governing public life in the government-controlled areas, and the Constitution of the SPLA/M, which governs public life in those parts controlled by the SPLA/M. I am sure if our brother Dr el-Hag wants to go to Yambio, he will need a visa from the SPLA/M. So the constitutional reality is that Sudan is not ruled by one constitution. But still there is also the reality that we would like to get rid of this duality and find a way to consensus.

I personally think that we should come to a settlement and start to work on achieving consensus. But also I think that when we do so, it is very likely that eventually we will come to the conclusion that Sudan is a country that is made up of social and political forces that are incapable of consensus on state- and nation-building. We have to face the fact that there are societies that are simply unable to have a consensus because their contradictions are so basic and the reactive forces are so strong and intransigent. In Pakistan and India, for instance, the controversy over an Islamic versus a secular state was so basic that Hindus and Muslims could not live together. Also, in the Central African Federation of Malawi, Zambia, and Rhodesia the contradictions were so basic that the Federation had to be dissolved into different countries. When this turns out to be the case in Sudan, then of course this reality will have to be recognised. That is why I say that perhaps one day Sudan must be called *konsensunfähig*, a country that cannot have consensus. I think that in Sudan we will, eventually, have to satisfy ourselves that Sudan is incapable of consensus, but still I do not want to deny consensus another chance.

Now all this is beautifully taken care of in the IGADD DOP. The DOP starts with affirming the right to self-determination for the people in the South. Then it affirms that the unity of Sudan will be given a chance, and that the parties should agree on wide measures of decentralisation, fundamental human rights, sharing of resources, and so forth. In point five, it says something very interesting. If the parties fail to agree on these things, then the people have the right to self-determination. This means that there are two instances of self-

determination. Firstly, self-determination for the people of the South is affirmed. Secondly, there are things that are going to be done for the interim period and if no agreement is reached on these things, then not only the Southerners but any group in Sudan could opt for self-determination. So we as Southern Sudanese have affirmed our right to self-determination in the DOP as something we have to exercise.

The right to self-determination for the South was affirmed by the NDA in the Asmara Declaration to be exercised within a certain period of time. The Asmara Declaration was accepted by the SSIM/A and the SSIM/A leader actually applied to join the NDA. The Asmara Declaration, in turn, prompted the present regime to come up with a number of choices. In fact, I am among those people who have accused the present regime of stealing the Asmara Declaration and cannibalising it, as if you take things from a car and then put them into your own car. In fact, they got away with it, undercut the NDA, and went ahead with the KPA and the constitution. But that again did not carry initial consensus. If they had adopted the Asmara Declaration in the manner that brought the NDA on the course of a national consensus, they would have been congratulated. But they did not do it that way. They did it in a manner that kept the contradictions there.

So with the Asmara Agreement and the KPA, we now have a consensus on paper on self-determination for the people of the South. Unfortunately, however, there is a growing awareness among Southerners that there is lack of sincerity, both from the government and the NDA. In the case of the government, this is abundantly clear; its partners in the KPA have come to the conclusion that the government is not serious. As for the NDA, we have found it making very subtle moves to undermine the right to self-determination for the South.

Mr Malwal and myself have been part and parcel of the constitutional text, which is at the heart of the Asmara Declaration. We were among the people who felt that this unity of Sudan should be given a chance, and we meant that sincerely. We were proud, in fact, that we had reached a consensus with our Northern brothers. It required the courage of both parties; we should have the courage to give unity a chance and those arguing for unity should have the courage to tell the Southerners: please go ahead and choose between an independent South and this kind of goodwill we have shown in the interim arrangement. I thought that they would have enough courage to do it, to make corrections in the interim period in order to assure the people in the South and other marginalised areas that a united Sudan is feasible. But then, over a period

of time, we discovered that there had been an elaborate strategy of trying to fight the self-determination for the people of the South, and in particular of using Egypt and the Arab world to fight it. Very clever indeed. And we felt that this was a setback to Northern Sudanese statesmanship. I thought they were statesman enough to make the brave choice and to stick to it, not to be taken away by the desire to undermine the agreement.

All this puts us in a new situation. The perception is now that our partners in the NDA are really not serious about self-determination. And should they come to power during the interim period, then we will probably be quarrelling with them, especially concerning the problem of our brothers in the NIF as partners in the national consensus. They were undermining self-determination against Riak Machar and now they will also undermine it against the SPLA/M. This is why we have a new situation now. A basic distrust has come up, which has led us to rethink the whole situation. Some people in the South are now saying: let us skip these interim arrangements and hold a referendum right now, because these people are going to deceive us in the interim period. This is the general fear among Southern Sudanese, and I think it should be addressed. Therefore, this is a period of examining the sincerity of commitment. Are we really sincere about giving the unity of Sudan a chance? And are we really sincere about giving self-determination a chance in a free and fair referendum?

This new situation can disappear if it is addressed. Because the IGADD DOP still speaks about an interim period, we have committed ourselves in Asmara to an interim period and interim arrangements. It is only during the interim period that we will have the chance to conclusively prove that the political and social forces in Sudan are incapable of consensus. If, during the interim period, we reach the point that the arrangements are not working or being undermined, then I do not think we will waste much time. As for now, I am optimistic that both options are still available. Now that we have agreed on self-determination as a major element of a peace settlement and as a basic human right, I think we should go on that basis. Any move to go deviate from the things agreed on will undermine peace efforts. Meanwhile, the ruling elite should come to the conclusion that unity cannot be imposed. It will mean continuous war.

When I talk about two visions of constitution, one hegemonic and the other of restructuring and redistribution, I meant this to be confronted now in a constitutional debate. The contribution the IDF has made is to introduce, for the first time, the search for consensus as a serious topic of discussion. This point has never been addressed as a separate item in previous discussions. I think the IDF contribution should be to make us aware, through a certain

exercise, of whether at all there is hope for consensus. If we on the table here reach a point that there is no consensus, then I really think we should leave the case, even the IGADD talks and the Libyan-Egyptian initiative. So I think it is a very useful exercise. Let us concentrate on consensus, let us identify the forces that block its achievement, which in my opinion of course are the forces of hegemony. Any movement to set up a hegemonic constitution in Sudan will not work. That is why I call it a blocked option. Since independence, the forces of hegemony have consistently blocked a number of options. Now they block the right to self-determination and the interim period in a very subtle way. We should de-block these options.

Dr David de Chand

I want to compliment my brother Dr Kok on what he said, and this is exactly what I have in mind. We signed the KPA with the government because we wanted to give peace a chance, but now it has been blocked. You signed the Asmara Agreement, but the very NDA is a party to block the right to self-determination for the South. I think that we have a consensus now that the people of the South are together on the right to self-determination. The ball is now in the Northern court; it is up to them to prove now whether we can co-exist or have to part.

Mr Ahmed Ibrahim Diriage

I fully agree with everything you said, Dr Kok. But I want to remind the people here that yesterday I said that in the IGADD DOP mentions that unity should be given a chance. I am happy that you mentioned this as well, because Mr Malwal and Dr de Chand were disputing it. Furthermore we should not forget that the DOP also gives the right to self-determination to other groups.

Mr Bona Malwal

If I did not want to give unity a chance, I would not have come here. For the last two days I have argued for interim arrangements through which unity will be given a chance.

Dr el-Tigani Seisi

It seems that Dr Kok and others want to imply that there is only one North which is entirely against the South. This way of thinking is very dangerous for Southern efforts to achieve self-determination. There are two Norths.

Mr Wani Rondyang

You cannot say that there are several Norths or Souths. What we are talking about here are different political definitions of the North and South, based on historical experiences.

Dr Mansour Yousif el-Ajab

Thank you, Dr Kok, I agree with almost everything you said. The interim period is now becoming very clear to me. If it is what we signed in the Asmara Declaration, which involves everybody, through the IGADD forum and on the basis of the DOP, then I am very happy. Therefore, I request my brother Dr el-Hag, when he goes back to Khartoum, to involve everybody.

Dr Ali el-Hag

Actually, in Khartoum we are involving everybody, except some of the people who are sitting here. That is a fact. What transpired from Dr Kok's statement this afternoon is that in all cases, whether in Asmara or Khartoum, probably they are not credible. That is the question that needs to be addressed.

I thought this meeting was meant to discuss and ventilate ideas, but now you want to formulate a summary. Everybody here has the right to express his/her thoughts, but I am against the kind of summary on which we are all supposed to agree.

Dr Pauline Riak

The idea of the summaries is to make suggestions for the further process.

Dr Peter Idenburg

To avoid misunderstandings about the summaries by Mr Michel Hoebink and myself, I would like to emphasise what I have already made clear in my paper on the objectives of this seminar. This is not a conference of negotiations, which should end with an agreement on fundamental points. We are not sitting here as parties who should reach agreements, but as individuals who exchange ideas. The discussion between parties and the making of agreements take place elsewhere. Here we can only agree on what has been discussed and what should be discussed later. So if we summarise what has been said, we do not aim at any sort of final statement.

Summaries are given

Dr Peter Idenburg and Mr Michel Hoebink

Dr Abdelsalam Sidahmed

My understanding of this summary is that it is not expressing an agreement among us on future discussions, but that it highlights the points mentioned in the discussion, and which we should take further in following meetings.

Dr Ali el-Hag

We are not here as negotiating parties, as Dr Idenburg said. In this seminar it is more important to get informed about each other than to try to convince each other. This should be the beginning of an ongoing process of exchanging ideas, for which in a later stage we may also use modern media, such as the Internet. Everybody here has had the chance to make his/her contribution. So a summary is not supposed to be an agreement but a summary of what has been said. I think all that has been said here should be written down and then sent to all the participants, and we should not accept it before we read it. Only after we agree with the text it can be published. I think that is something in itself. Let us put it together so as to be a reference to the people who make decisions about it.

Dr Anoush Ehteshami (closure)

I am impressed with what I have heard of the debates here. Personally, I feel very concerned about the international dimension of the further process. We are not living in a vacuum. The interim arrangements, which have been discussed here, cannot come about or survive without an arbiter, somebody from the outside, nor without a degree of international consensus. This is clear from other examples such as Indonesia and former Yugoslavia.

Dr Peter Idenburg (closure)

I am glad that Dr el-Hag referred to the objectives of this seminar I mentioned at the outset. This was not a conference of negotiations. We view it as our task to encourage the process of dialogue and exchange of views. We will now make a report of this meeting which will be distributed to the participants as a reference for our further discussions. Beside the report you can expect, from us, further proposals on how to proceed with this project. I do not think these

will be very different from what we have proposed earlier, but there may be some modifications in light of what we have discussed here. What remains for me now is to thank all of you for coming here.

87 CB

APPENDIX I

Programme of the Durham Seminar 'Constitutional Perspectives on Sudan'

23-25 September 1999
Durham, UK

Thursday 23 September

Afternoon

Arrival of the participants: informal meeting

Friday 24 September - General Evaluation

- | | |
|---------------|--|
| 09.30 - 09.40 | Welcome by Dr Anoush Ehteshami (Centre for Middle Eastern and Islamic Studies, University of Durham/General Board IDF) |
| 09.40 - 10.00 | Opening and explanatory remarks on the Seminar by Dr Peter Idenburg (Chairman Executive Board IDF) |
| 10.00 - 13.00 | <i>Evaluation of Sudanese Peace Efforts</i> |
| 10.00 - 10.15 | Chair Dr Peter Woodward (University of Reading) |
| 10.15 - 10.35 | Statement Dr Ali el-Hag Mohammed (Deputy Secretary-General of the National Congress) |
| 10.35 - 10.55 | Statement Dr Peter Nyot Kok (Max Planck Institute of Hamburg) |
| 11.00 - 11.30 | Discussants Dr Abdelwahab el-Affendi (University of Westminster); Dr Pauline Riak (Sudan Women's Association Nairobi) |
| 11.30 - 11.45 | Coffee |

- 11.45 - 13.00 Discussion
- 13.00 - 14.30 Lunch
- 14.30 - 17.30 *Creating a Consensus*
- 14.30 - 14.45 Chair Dr Peter Woodward (University of Reading)
- 14.45 - 15.15 Statement Dr Abdelsalam Sidahmed (University of Durham)
- 15.15 - 16.00 Discussants Dr Sumayya Abukashawa (Member of Sudanese Parliament); Dr el-Tigani Seisi (Africa Relief International); Mr Bona Malwal (Chief Editor of *Sudanese Democratic Gazette*)
- 16.00 - 16.15 Coffee
- 16.15 - 17.30 Discussion
- 17.30 - 18.00 Closure

Saturday 25 September - Preparing for the Conference

Themes for the Conference on Constitutional Perspectives on Sudan

- 09.30 - 09.45 Chairs Dr Sumayya Abukashawa (Member of Sudanese Parliament); Dr Pauline Riak (Sudan Women's Association Nairobi)
- 09.45 - 10.05 Statement Dr Khalfalla el-Rasheed (Chairman of the National Constitutional Commission)

APPENDIX II

Profile of Participants

Seminar Constitutional Perspectives on Sudan
Durham, 23-25 September 1999
(in order of appearance)

Dr Ali el-Hag Muhammad

Studied Medicine in Khartoum and the UK. Held several ministerial posts in the Republic of Sudan during the past ten years and is currently member of the National Assembly and Deputy Secretary-General of Sudan National Congress. He has been a member and spokesman of the government delegation in several peace negotiations. To date he is a member of the government delegation to resumed talks in the IGADD.

Dr Peter Nyot Kok

Studied Law at the Universities of Khartoum, London, and Yale, and was a lecturer in Constitutional Law at the University of Khartoum. He is the author of *Governance and Conflict in Sudan 1985-95*. As a senior member of the SPLA/M, he was part of several of its teams to negotiate with the government of Sudan. Currently, he is advisor on Constitutional and Legal Affairs of the SPLA/M and a visiting fellow at the Max Planck Institute for Foreign and International Private Law in Hamburg.

Dr Abdelwahab el-Affendi Osman

Studied Philosophy and Political Science in Khartoum and the UK, and published several books on political Islam in Sudan including his doctorate thesis *Turabi's Revolution: Islam and Power in Sudan*. Currently, he is coordinator of the Project on Democracy in the Muslim World at the Centre for the Study of Democracy, University of Westminster. Regular contributor to *Al-Quds* daily and other Arabic periodicals. He is a politically independent Islamist intellectual.

Dr Pauline Riak

Graduated from Stanford University, California, and established the Sociology Department at Kenyatta University in Nairobi. In addition to her present work as a consultant and representative at the UN, she is a founder and chairperson of Sudanese Women's Association in Nairobi (SWAN). As such, she is actively involved in a dialogue on constitutional reform with a wide variety of Sudanese issues, especially those concerned with preventive diplomacy, peace building, and the rights of women in nation-building.

Dr Abdelsalam Sidahmed

Studied Political Science in Khartoum and at Prague University (Ph.D.), and was a research assistant at the Faculty of Social and Political Sciences, at Cambridge University. He is the author of several publications on Sudanese politics including *Politics and Islam in Contemporary Sudan*. He is a politically independent academic, presently affiliated to the Centre for Middle Eastern and Islamic Studies, the University of Durham.

Dr Sumayya Abukashawwa

Graduated from the University of Khartoum and completed her Ph.D. in Molecular Biology at the University of Ottawa, after which she became a professor at the University of Khartoum. Since 1992, she has been elected Secretary General of Sudanese Women General Union (SWGU), as well as a member of the National Assembly (parliament). Also, she is editor-in-chief of Sudanese weekly *Noon*.

Dr el-Tigani Seisi Muhammad Ateem

Completed his B.Sc. studies in Khartoum, and his Ph.D. at London Business School. Between 1987 and 1989, he had been Minister of Finance and Economic Planning and subsequently governor of Darfur State. He was a senior lecturer at the School of Management, University of Khartoum, and worked as a consultant for a number of international organisations, such as the World Bank, USAID, and MSF Holland. Currently he is the Director of Africa Relief International (ARI) in London.

Mr Bona Malwal

Studied Journalism and International Affairs at several American Universities, and was Minister of Culture and Information of the Government Sudan between 1972 and 1978. Presently, he is Senior Research Fellow at St. Anthony's College, Oxford, and editor and publisher of the *Sudan Democratic Gazette*, a monthly newsletter published from London. He is a member of the Executive Council of the National Democratic Alliance.

Dr Khalafalla el-Rasheed

Holds degrees in Law from the Universities of Khartoum and Cambridge. He was Chief Justice from 1972 to 1982. He was involved in various efforts of legal reform in Sudan, such as the Judiciary Act of 1973, the Committee for the Revision of the Law to bring it in conformity with the *shari'a* (1977). Presently, he is the Chairman of the National Constitutional Committee.

Dr Amin Mekki Medani

Holds degrees in Law from the Universities of Khartoum, Luxembourg, London, and Edinburgh (Ph.D.). He was a senior lecturer in Law at the University of Khartoum. Author of numerous articles on human rights and democracy in the Middle East. He was the president and founding member of Sudanese Human Rights Organisation (SHRO). Presently, he is Chief Technical Advisor of the UN High Commissioner, Centre for Human Rights, West Bank and Gaza Office.

Dr David de Chand

Completed his Ph.D. in Political Science at the University of Atlanta after which he was employed at several American universities and the University of Juba. He has been founding member of the South Sudan Independence Movement/Army (SSIM/A), and a former member of the Technical and National Committees in drafting the Constitution of Sudan (1997-98). Currently, he is the Director of the Peace and Human Rights Department of the Sudanese Ministry of Foreign Affairs.

Mr Ahmed Ibrahim Diriage

Studied Arts and Social Sciences at the Universities of London and Leicester. He had been involved in Sudanese political system as a member of parliament.

Minister of Labour, and later as the Governor of Darfur State. At present, he is the Chairman of Sudan Federal Democratic Alliance, which forms part of the NDA, and a member of the five-man committee of the opposition leadership council responsible for following the efforts for the comprehensive settlement of Sudanese political conflict.

Dr Mansour Yousif el-Ajab

Studied Development Economics in the UK, the Netherlands, and Hungary (Ph.D.). He was a visiting lecturer at the University of Khartoum, an independent member of parliament (1986-89), and Secretary-General of Sudanese Red Crescent/Cross Society. Presently, he is President of the London-based Association for Humanitarian Assistance to Sudan.

Mr Wani Rondyang

Studied Education in Khartoum and the UK. At present he is a part-time researcher on language policy in education in Southern Sudan at the Institute of Education at the University of London. He is a member of the SPLA/M and was elected into the SPLA/M's National Liberation Council.

Mrs Yvonne Heselmans

Studied Social Geography at the University of Utrecht, the Netherlands. She has been working for the intercultural program Holland World Youth, and is currently working as a staff member at the Africa Secretary of Pax Christi in Utrecht.

Mr Michael Medley

Holds an MA in Development Studies from the University of Bath. He has worked on Sudan for most of the last twelve years as teacher, aid worker and researcher. He is currently based in Nairobi as a freelance consultant.

Dr Peter Woodward

Holds a Ph.D. from the University of Reading, where he is currently is a professor at the Department of Politics. He is the author and editor of several books on North-east Africa, including Sudan 1898-1989: The Unstable State. He was the former editor of African Affairs. He is the present editor of British Documents on Foreign Affairs, and regular contributor to BBC World Service.



Dr Anoush Ehteshami

Studied Political and Social Sciences in Nottingham Trent and at Exeter (Ph.D.), where he became a lecturer in Politics. He is the author of many books and articles on Middle Eastern Politics. Presently, he is the Director of the Centre for Middle Eastern and Islamic Studies at the University of Durham. Since 1998, he has been is a member of the General Board of the IDF.

Dr Peter Idenburg

Studied Law and Philosophy at the University of Leiden, where he wrote his dissertation on Political Strategy and Tactics. He was a lecturer in international relations at the Free University of Amsterdam, and founder and co-ordinator of the Research Institute of Oppressed Peoples. In 1989, he became the Director of the IDF. At present, he is Chairman of Executive Board of IDF.

Mr Edu Willemse

Studied Political Science at the University of Leiden. At present, he is Managing Director of International Dialogues Foundation.

Mr Michel Hoebink

Researcher in the field of Islamic Studies, and affiliated to the Department of Science of Religion at Utrecht University. He is the author of a number of articles on modern Islamic thought, and is presently writing his doctorate on the development of Sudanese Islamist ideology.

Mr Mirko van Muijen

Studied Political Science at the University of Leiden. He was project assistant at IDF for the project 'Constitutional Perspectives on Sudan'.



APPENDIX III

Outline of the IDF Project 'Constitutional Perspectives on Sudan'

Description of the project

In the project 'Constitutional Perspectives on Sudan', IDF will organise a number of activities that can be helpful to prepare the ground for a national discussion on the constitutional future of Sudan, in which all parties will be involved. This project includes the following activities:

1. Consultative meetings and interviews with a broad spectre of experts and key figures representing the major parties in Sudanese conflict (preparatory phase);
2. Seminar in Durham with a limited number of academic and political experts, who will make an evaluation of the peace initiatives so far, and prepare for the conference;
3. Conference of Sudanese constitutional experts representing the various political parties and groups on constitutional perspectives on Sudan, will be held in The Hague;
4. Report the results of the seminar, which will be distributed to the various parties inside and outside Sudan.

The activity phase of this project is this year, with a short extension to the year 2000 from July 1999 to June 2000. The project will be carried out by the IDF in co-operation with the Centre for Middle Eastern and Islamic Studies at the University of Durham (UK).

Objectives

The objectives of the project are:

1. Preparation of a report that should provide material for a 'National Constitutional Platform' for all parties, to be held in the interim period preceding the referendum of the people of Southern Sudan according to the Treaty of Khartoum of 21 April 1997;
2. Development of a forum for the exchange of views on a more permanent base, where experts and politicians both from Sudan and other countries can participate.

Methodology

The last few years have witnessed a further polarisation between conflicting parties in Sudan, which has brought the negotiation process into a deadlock. The only structure that at present is available for the fostering of the negotiations between the conflicting parties is provided by IGADD, as it is supported by IGADD Partners Forum. The organisers of this project want to place their effort within the context of the IGADD peace process by trying to present concrete ideas on the constitutional future of Sudan.

The provision of an independently functioning network of influential intellectuals, representing the major political groups is an essential element of this project. This is because, in the first place as experience has shown, dialogue initiatives in which the conflicting parties participate tend to have more of a zero-sum character than of a real dialogue. Second, the polarised character of the present situation works as an obstruction for a process of the development and exchange of creative ideas on the future of Sudan. Furthermore, such a communication network of intellectuals representing the various conflicting groups can help to develop a national consensus, which is a necessary condition for constructive relations in the future.

The crucial role of the communication network in this project means that a careful step by step approach is needed in the building up of the program of activities. In the preparatory phase consultations have taken place with a number of key figures representing the various parties. On the basis of these consultations, the following program of activities was decided upon:

(a) Seminar to be held at the University of Durham

The objectives of the seminar are to make an evaluation of the peace initiatives for Sudan so far, and to discuss the set-up of the conference. A limited number of the advisors of this project will be invited. An important aspect of this meeting will be that the discussions will take place in the conducive atmosphere, so that the participants do not feel that they are talking in front of an audience. Speakers who have been invited include, among others:

- Dr Abdelwahab el-Affendi Osman - University of Westminster
- Dr Abdelsalam Sidahmed - University of Cambridge and Durham
- Dr Sumayya Abukashawwa - Member of Sudanese Parliament
- Dr Peter Nyot Kok - Max Planck Institute of Hamburg
- Dr Khalafalla el-Rasheed - Chairman of the National Constitutional Committee
- Mr Bona Malwal - Chief Editor of *Sudanese Democratic Gazette*

One of the important points on the agenda for the Durham meeting will be suggestions for the participation of women in this project.

(b) Conference to be held in The Hague

At this conference proposals for a future constitution will be discussed. The constitutional consequences both for Sudan itself and for an independent Southern Sudan should also be brought into the discussions since the Treaty of Khartoum (21 April 1997) recognises the right of a referendum for the people of Southern Sudan and the referendum as such will recognise the possibility of the secession of Southern Sudan. Leading academic authorities on constitutional law will be invited to participate in this seminar. Although the various political positions should be reflected in the composition of the participants - paradoxical as it may sound - a de-politicisation of the conference might be politically the more effective approach.

In addition to the speakers of the Durham seminar, the participants of this conference will include, among others:

- Dr El Radi Siddik- Chairman of the Technical Constitution Committee
- Professor Al-Tayib Z. Al-Abdin - University of Khartoum

- Dr Muhammed Jusef Muhammed - Lawyer and Member of Parliament
- Dr Abel Alier - Former Vice-President of Sudan; president of the High Executive Council for the region of Southern Sudan
- Dr Mansour Khalid - Former Minister of Foreign Affairs of Sudan
- Dr Mohammed Salih - Institute of Social Studies of The Hague, University of Copenhagen

Every participant of the seminar in The Hague will be invited to write a paper. A reader with the collected papers will be distributed in advance so that it can function as a basis for the discussion.

(c) Report

Based on these activities a report, containing the papers and the conclusions of the seminar, will be published. The report will then be sent to all the parties involved. The main objective of this report will be to provide material for a 'National Constitutional Platform', attended by all parties, to discuss the constitutional future of Sudan. Furthermore, the report can be helpful to promote a discussion in a broader circle of policy makers and opinion leaders. In order to stimulate the public debate, the project foresees a public presentation in Brussels, to which representatives of the European Union, NGO's, diplomats and the press will be invited.

Target groups communication network

The communication network will be based on a system of concentric circles of people that are to be involved in the various phases of the project. The inner core of communication network consists of about fifteen people, most of whom have been involved in the earlier preparatory phases of this project. This includes the Steering Working Group consisting of:

- Professor Paul de Waart - Free University of Amsterdam
- Dr Anoush Ehteshami - University of Durham
- Dr Jörgen Nielsen - Selly Oak Colleges of Birmingham
- Dr Peter Idenburg - IDF
- Mr Michel Hoebink - Utrecht University
- Professor Timothy Niblock - University of Exeter

This group will be extended by the participants of the seminar in Durham. As a next step the participants of the conference in The Hague will be included.

This network should be further extended by the follow-up activities of this project, which will focus on the set-up of a constitutional platform. Since in this phase the emphasis will be on direct negotiations, it is likely that the network will be extended by people who are more directly involved in the decision making process. This would also include governmental and non-governmental decision-makers and experts from other countries.

Expected results

One of the results will be the creation of a report with proposals, which can provide material for a 'National Constitutional Platform'. The report will also be distributed to promote a broader public discussion inside and outside Sudan. Furthermore, what should also be considered as one of the important results of this project is the creation of a forum of experts and politicians from the various parties.

Feasibility of the project

IDF is an independent international organisation with its base in the Netherlands. It has organised conferences and other activities on issues like the Israeli-Palestinian question, the position of the Kurds, children in armed conflict and the dialogue between Islam and the West. Since 1995, IDF has had a special involvement in the situation of Sudan. On orientation missions that were made to Khartoum and Nairobi meetings took place with a large number of the leading figures of both the government and the opposition parties. Among them Hassan al-Turabi, Ali Osman Mohamed Taha, Ghazi Salahuddin Mutawali Atabani, Zubier, Sadiq al-Mahdi, Abel Alier, John Garang (met in Bonn), and Pagan Amum. Recently, on the base of intensive consultations with experts and representatives of the various parties, the foundations for the network of this project have been strengthened.

Duration of the project and calendar of the activities

23-25 September 1999:	Seminar in Durham, UK
January-April 2000:	Collection and distribution of the expert papers for the seminar in The Hague
May 2000:	Conference in The Hague
August-September 2000:	Drafting the report

October 2000:

Public presentation and distribution of the report
and start of the follow-up activities

The Hague, September 1999

SC CS

APPENDIX IV

Women in Search of a Just Peace for Sudan

(Plea of Sudanese Women in Search of a Just Peace for Sudan to the negotiating parties in the IGADD peace process on Sudan. Submitted to the Durham seminar by Dr Pauline Riak)

Preamble

We, the women of Sudan representing the three regions of the South Sudan (Upper Nile, Babr-el Ghazal, Equatoria) and the Nuba Mountains, met in Nairobi on 16 July 1999 to pursue our contribution to the IGADD peace process for Sudan;

- Recognising that the peoples of Sudan have been victims of the longest war in the history of the world whose death toll is currently estimated at 2.9 million. This outnumbers all fatalities incurred in recent violent conflicts in Afghanistan, Algeria, Bosnia, Burundi, Chechnya, Kosovo, Rwanda and Somalia combined;
- Aware that the people of Southern Sudan and other marginalised groups such as the Nuba Mountains, Abieye and Southern Blue Nile today constitute the largest number of internally displaced people (4 million) not to mention the high number of refugees (500,000);
- Aware also that all the countries neighbouring Sudan continue to host Sudanese refugees;
- Taking note of the fact that Sudan is a potentially rich country yet today in Southern Sudan about 11 million people are utterly impoverished from wars or war-related disasters. In the past three years more than 2.5 million Southern Sudanese faced serious food shortages and have struggled to escape one of the worst man-made famine seen anywhere in the world;
- Recalling the many tears shed by the women of Sudan, and who can no longer cry in silence. They can no longer bear the pain, suffering and

ravages of the war silently. The women declare that the people of Sudan deserve to live in a just and sustained peace!

Pursuant of the above, women have agreed to plead directly with IGADD as follows:

1. The women of Sudan want to return to their homes and to live in a peaceful and secure environment. They constitute more than 60% of the population of Sudan. They have been disproportionately affected by the war. 80% of all war related deaths in the past 15 years in Sudan have been unarmed civilians mainly women and children.
2. The death and displacement of more than 6 million people from a single country is worthy of immediate, concerted and corrective action. The women want to be part of this process, as they believe they can positively contribute to a non-partisan lasting peace.
3. Appreciative of the internal and external efforts made to bring peace to Sudan, women recognise and welcome the efforts of IGADD countries, International Partners Forum, organisations and individuals involved in the search for a peaceful settlement of the conflict in Sudan. In this respect, the women affirm the IGADD peace process and the 1994 DOP as a critical milestone in the peace process.
4. Women endorse the principle of self-determination as an inalienable right of the people of Sudan and therefore urge the negotiators to treat this issue expeditiously and with the care that it deserves so that the aspirations of all the people of Sudan are realised. We further appeal to IGADD to ensure that the mechanisms for implementation are carefully worked out so that human rights principles are upheld, the process does not fall prey to delays and treachery, and that it is free and fair.
5. We support the planned independent secretariat for the purposes of neutrality and effectiveness in the search for a peaceful settlement of the conflict in Sudan.
6. We are concerned that the practice of limiting the period for each phase of the negotiation for a process that is so complex does not augur well for progress towards agreement. We are also concerned that the intervals between the negotiations are sometimes too long and could result in a loss in gains made at the negotiating table. We appeal for the negotiations to be

sustained for as long as is necessary for the parties to meaningfully address and, where possible, come to a conclusion on specific key issues.

7. We are convinced that for a sustained peace in Sudan, it is important that the process is inclusive. We therefore call on IGADD to look into ways of engaging the civil society even in the capacity of observers. In particular, women want, and have a right, to participate in the peace process in a substantive manner.
8. We urge IGADD and the International Partners Forum to put sustained and unrelenting pressure on the conflicting parties to immediately end air bombardments and such hostilities that indiscriminately target the civilian population.
9. We urge for co-operation between the United Nations, IGADD, the Government of Sudan, and Sudanese people to implement a programme of protection for innocent civilians. In particular, we reiterate the need for humanitarian assistance to continue unhindered. Currently, some parts of Upper Nile are not receiving any humanitarian assistance. We are also particularly concerned that the people of the Nuba Mountains have never received any humanitarian assistance. We appeal to you to take urgent measures to address the difficult situation faced by those in the Nuba Mountains. We, in particular, urge you to seek their inclusion in the agreement for humanitarian assistance under the auspices of OLS.
10. We appeal to all peace loving peoples of the world, the people of Sudan, the peace negotiators, the heads of IGADD states, the International Partners Forum, the UN Secretary-General and the millions of friends of Sudanese people everywhere to use every possible means to end the war in Sudan and to bring about a lasting and just peace.

We confirm our willingness and our ability to play a useful role in this process and believe that IGADD will support the effective participation of women in the peace process for Sudan.

19 July 1999

FO 68

Recent Titles in this Series

- No. 25 *Urbanisation in the Arabian Peninsula*, N.C. Grill, (1984)
- No. 26 *Labour Unions, Law and Conditions in Iran (1900-1941)*, W. Floor, (1985)
- No. 27 *Ataturk's Legacy to the Women of Turkey*, I. Browning, (1985)
- No. 28 *Foreign Policy Issues in the Middle East Afghanistan - Iraq - Turkey - Morocco*, R.I. Lawless (ed.), (1985)
- No. 29 *Middle Eastern Exports: Problems and Prospects*, B. Yilmaz, R. Wilson, P. Stevens and T. Hamazawa, (1986)
- No. 30 *The Territorial Disintegration of a State: The Case of Lebanon*, N. Kliot, (1986)
- No. 31 *The Gulf in the Early 20th Century - Foreign Institutions and Local Responses*, R.I. Lawless (ed.), (1986)
- No. 33 *Trade and Finance in Jordan*, I.I. Seccombe and R.I.A. Wilson, (1987)
- No. 34 *The Genius of Usamah Ibn Munqidh: Aspects of Kitab al-I'tibar by Usamah Ibn Munqidh*, D.W. Morray, (1987)
- No. 35 *The National Ideology of the Radical Algerians and the Formation of the FLN 1924-1954*, Salah El Din El Zein El Tayeb, (1987)
- No. 38 *Palestinian Americans: Socio-political Attitudes of Palestinian Americans towards the Arab-Israeli Conflict*, I. Barghouti, (1989)
- No. 39 *Fisheries of the Arabian Sub-continent: A Bibliographic Study 1809-1983*, Mata-Ur-Rahim, (1989)
- No. 40 *Aspects of Religion in Secular Turkey*, M. Wagstaff (ed.), (1990)
- No. 41 *A State without a Nation*, D. Stoten (ed.), (1992)
- No. 42 *The Condominium Remembered, Proceedings of the Durham Sudan Historical Records Conference 1982, Volume 1: The Making of the Sudanese State*, D. Lavin (ed.), (1991)
- No. 44 *The Condominium Remembered, Proceedings of the Durham Sudan Historical Records Conference 1982, Volume 2: The Transformation of the Old Order in the Sudan*, D. Lavin (ed.), (1993)
- No. 45 *The Palestinian Economy and International Trade*, R. Wilson, (1994)

- No. 46 *Saudi Arabia's Foreign Policy: Relations with the Superpowers*, M. Harrison, (1995)
- No. 47 *Israel and the Palestinians: The Economic Rewards of Peace?*, E. Murphy, (1995)
- No. 48 *Islamic Banking in Practice: Problems in Jordan and Saudi Arabia*, J. W. Wright, Jr., (1995)
- No. 49 *Manufacturing and Women in the Middle East and North Africa: A Case Study of the Textiles and Garments Industry*, V.M. Moghadam, (1995)
- No. 50 *The Politics of Economic Restructuring in Post-Khomeini Iran*, A. Ehteshami, (1995)
- No. 51 *The Muslim Communities Project Volume 1: Muslim Communities in France*, S. Taji-Farouki (ed.), (1995)
- No. 52 *The Muslim Communities Project Volume 2: Muslim Communities in the Netherlands and Germany*, S. Taji-Farouki (ed.), (1995)
- No. 53 *Three Topics in Arabic Phonology*, I. Dickins, B. Heselwood and J.C.E. Watson, (1996)
- No. 54 *The Ubiquitous Faqih: A Reconsideration of the Terms Imam, Islam and 'Ilm and Their Role in the Rise to Predominance of the Jurist in the Islamic World of Learning*, C. Turner, (1996)
- No. 55 *An Israeli Plan to Transfer Galilee's Christians to South America: Yosef Weitz and "Operation Yohanan" 1949-53*, N. Masalha, (1996)
- No. 56 *The Oslo Agreement in Norwegian Foreign Policy*, N. Butenshon, (1997)
- No. 57 *The Egyptians of Britain: A Migrant Community in Transition*, G. Karmi, (1997)
- No. 58 *The Implications of the Revival of the Oil Industry in Azerbaijan*, J. Hemming, (1998)
- No. 59 *The Collapse and Reconstruction of Lebanon*, T. Najem, (1998)
- No. 60 *The Policy of 'Critical Dialogue': An Analysis of European Union Human Rights Policy towards Iran from 1990 to 1997*, M. Struwe, (1998)
- No. 61 *The Legacy of the Corporatist State: Explaining Workers' Responses to Economic Liberalisation in Egypt*, N. Pratt, (1998)

NOTES FOR CONTRIBUTORS

All notes in the text should appear as footnotes. They should be numbered consecutively throughout the text. The abbreviation 'pp.' should be used for page numbers in footnotes. Full bibliographical information should only be given in the first citation of a work. When reference to the afore-mentioned work follows without interruption use '*Ibid.*'. Please avoid using 'cf.', 'f', and 'ff'.

Examples

N. Chomsky, *Deterring Democracy* (London: Vintage, 1992), pp. 45.

S. Smith, "The Self-images of a Discipline: A Genealogy of International Relations Theory", in K. Booth, and S. Smith (eds.), *International Relations Theory Today* (Cambridge: Polity Press, 1995), pp. 30.

S. David, "Explaining Third World Alignment", *World Politics*, vol. 43, no. 2, January 1991, pp. 235.

A translation of works cited in a language other than English should be provided in square brackets.

P. Rudolf, *Konflikt oder Koordination? Die USA, Iran und die Deutsch-Amerikanischen Beziehungen* [Conflict or Co-ordination? The USA, Iran and the German-American Relations] (Ebenhausen: Stiftung Wissenschaft und Politik, 1996), pp. 35.

With works in Arabic, only the first letter in the first word should be capitalised.

G. Nasser, *Falsafat al-thawrah* [Philosophy of the revolution] (Cairo: Al-Dar al-Qawmiyyah, 1955), pp. 53-73

When reference to the same work follows after interruption use '*op. cit.*'.

Quotations

Short quotations (less than 3 lines) within the text should appear within single quotation marks; longer quotations should be indented 0.5 cm along both the right and left margins. Words, punctuation, or italicisation not present in the original should be contained within square brackets.

Bibliography

A list of all the works cited in the text (and suggested readings if there are any) should be provided at the end of the text under the title 'Bibliography', which should then be divided into 'Books', and 'Articles', etc. Please list all references alphabetically by author. Where more than one work is cited by an

individual author; works for this author should be listed chronologically. Please supply complete information about periodical data, such as volume, month, and page numbers. For example:

Kubursi, A., and S. Mansur, "Oil and the Gulf War: An 'American Century' or 'New World Order'", *Arab Studies Quarterly*, vol. 15, no. 4, fall 1993, pp. 1-17.

Tables and Figures

Tables and figures should be submitted typed, using Word or Excel, on separate sheets and not included as part of the text. If they are not supplied in this form, they will be redrawn by the publisher.

A hard copy, with double spacing and 2.5 cm margin on both sides, and a copy on a floppy disk on Word should be sent to:

Dr Neil Quilliam
CMEIS
University of Durham
South Road
Durham DH1 3TG
email: N.M.Quilliam@durham.ac.uk

Please note that manuscripts failing to confirm to the above guidelines will be returned to the author.

